REPORT OF THE CIVIL JUSTICE COMMITTEE

1924-1925

Appendix No. 2—ORAL EVIDENCE

(In Three Volumes)

VOLUME III

(Madras, Bombay and Sind)

00108592

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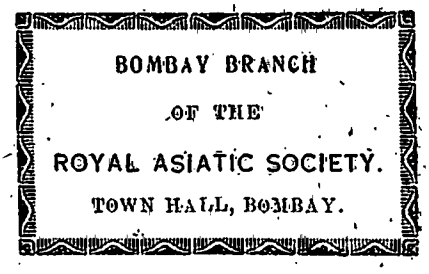

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MADRAS.

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PRESENT:

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law, Chairman.

The Hon'ble Mr. Justice L. Stuart, C.I.E., I.C.S.

Dr. F. X. DeSouza, I.C.S., Bar.-at-Law.

Diwan Bahadur Sir T. Desika Acharyar, Kt.

Diwan Bahadur C. V. Viswanatha Sastri, District Judge, South Arcot District.

Mr. V. Radhakrishnaiya Avargal High Court Vakil, Madras.

Diwan Bahadur C. Krishnaswami Rao, Retired District Judge and practising lawyer, Madras.

Mr. C. V. Krishnaswami Ayyar—Secretary.

List of Witnesses examined in Madras.

Tuesday, the 29th July 1924.

*1.	Mr. T. R. Venkatarama Sastri .	Advocate-General, Madras.
*2.	Mr. C. V. Anantakrishna Aiyar .	Government Pleader, Madras.
*3.	Diwan Bahadur C. R. Tiruvenkata Acharyar.	Chief Judge Small Cause Court, Madras.

Wednesday, the 30th July 1924.

4.	Mr. R. Rangaswami Ayyangar .	District Munsif, Arni.
5.	Mr. K. Sundram Chetti . .	Judge, Small Cause Court, Madras.
*6.	Mr. P. Subbiah Mudaliyar . .	District Judge, Nellore.

Thursday, the 31st July 1924.

*7.	Dr. S. Swaminadham . . .	Vakil, High Court, Madras.
8.	Mr. S. Subrahmaniam Aiyer .	Vakil, High Court, Madras.
9.	Diwan Bahadur G. Narayanaswami Chetty.	Vakil, High Court, Madras.
10.	Mr. Marthandam Pillay . .	Vakil, High Court, Madras.

Friday, the 1st August 1924.

11.	Mr. K. M. Krishna Kurup . .	District Munsif, Udamalpet.
12.	Mr. R. S. Sankariar . . .	Sub-Judge, Coimbatore.
*13.	Mr. K. Raghavendra Rao . .	Official Receiver, Coimbatore.
14.	Mr. S. Venkatarama Ayyar . .	Vakil, High Court, Madras.

Saturday, the 2nd August 1924.

*15.	Mr. Alladi Krishnaswami Ayyar .	Vakil, High Court, Madras.
*16.	Diwan Bahadur L. A. Govindaraghava Ayyar.	Vakil, High Court, Madras.
17.	Rao Sahib M. K. Venkata Acharya.	Assistant Registrar, Co-operative Societies, Madras.

Monday, the 4th August 1924.

18.	Mr. S. Vardachariar . . .	Vakil, High Court, Madras.
19.	Mr. P. M. Sivagnana Mudaliar .	Representative, Vellala Mahajana Sangam.
*20.	Mr. P. W. Partridge . . .	Solicitor, Madras.

Tuesday, the 5th August 1924.

21.	Mr. A. V. Subbarao . . .	Vakil, Berhampore.
22.	Mr. T. Srinivasa Mudaliar . .	Assistant Registrar, Co-operative Societies and President, Bar Association, Erode.
23.	Mr. T. N. Ramakrishna Reddy .	Hony. District Registrar, Co-operative Societies and Pleader, Chittoor.

Wednesday, the 6th August 1924.

24.	Mr. P. Venkataramana Rao . .	Vakil, High Court, Madras.
25.	Mr. P. L. Narasimham . .	High Court Vakil, Vizagapatam.
*26.	Mr. T. R. Ramachandra Ayyar .	President, Vakils' Association, High Court, Madras.

Thursday, the 7th August 1924.

*27.	Mr. P. Ramanathan . . .	Representative, Madras Attorneys' Association.
28.	Mr. A. Venkataramanayya Pantula	Sheristadar, Sub-Court, Rajahmundry.
29.	Mr. V. Namasivayam Pillai . .	Sheristadar, Sub-Court, Tinnevelly.
30.	Mr. K. R. Venkatarama Ayyar .	Representative, Madura Bar Association.
31.	Rao Bahadur O. Thanicachellam Chettiar.	Advocate, Representative, Madras Bar Association.
32.	Mr. T. V. Seshagiri Ayyar . .	Retired Judge, High Court, Madras.

Friday, the 8th August 1924.

33.	Mr. R. Ramaseshayar . . .	Representative, Bar Association, Rajahmundry.
34.	Mr. Siva Rao	Representative, Bar Association, Rajahmundry.
35.	Mr. V. V. Jogiah . . .	Representative, Ganjam Bar Association, Berhampore.
36.	Mr. E. G. Butler	Registrar, High Court, Madras.
37.	The Hon'ble Mr. Justice C. V. Kumarswami Sastri.	Judge, High Court, Madras.

Saturday, the 9th August 1924.

*38.	Mr. A. Rangachariar . . .	Representative, Vakils' Clerks Association, Madras.
39.	Mr. R. Vydhyanathaswami . .	Representative, Madras Vakils' Clerks Association.
40.	Mr. K. S. Ramaswami Sastri .	Sub-Judge, Nagapatam.
41.	Mr. Raghunatha Rao . . .	Representative, Madras Landholders' Association.
42.	Diwan Bahadur Seshagiri Rao .	Vakil and President, District Board, Coconada.
43.	Mr. K. V. Krishnaswami Ayyar .	High Court Vakil, Madras.
44.	Hon'ble Mr. Justice Wallace. .	Judge, High Court, Madras.

Monday, the 11th August 1924.

*45.	Mr. P. R. Ganapathi Ayyar . .	High Court Vakil, Madras.
46.	Mr. T. Kumaraswamiah . .	High Court Vakil, Madras.
*47.	Mr. Ranganayakalu Naidu . .	Representative, Indian Officers' Association, Madras.
*48.	Mr. J. W. Hughes . . .	District Judge, Chingleput.

Wednesday, the 13th August 1924.

*49.	Mr. S. Jagannatha Row . .	Representative, Panchayat Courts, Kistna District.
50.	Mr. A. Suryanarayana Murti .	Representative, Village Panchayat Court.
51.	Mr. G. Thambuswami Pillai . .	President, Panchayat Court, Mannagudi Taluq, Tanjore District.
52.	Mr. R. Srinivasa Ayyangar, M.L.C.	President, Bar Association, Cuddalore.
53.	Mr. J. A. Saldhana, M.L.C. . .	Retired Assistant Judge and Additional Sessions Judge, Bombay Presidency.
54.	Mr. M. V. Ramaswami Ayyar .	Vakil, Tinnevelly.
55.	Mr. Mohd. Ghause Mian . .	Pleader, Tinnevelly.

Friday, the 15th August 1924.

*56.	Raja Rajeswara Setupati, M.L.C. .	Rajah of Ramnad.
57.	Mr. M. R. Setu Ratnam Ayyar, M.L.C.	Landholder, Trichinopoly.
*58.	Diwan Bahadur M. Krishnam Nair, M.L.C.	Retired Dewan of Travancore.
*59.	Mr. J. C. Adam	Public Prosecutor, Madras.
*60.	Mr. A. J. King, I.C.S. . . .	District Judge, North Arcot.
*61.	Hon'ble Mr. C. P. Ramaswamy Ayyar.	Member of H. E. the Governor's Executive Council, Madras.

* Written statement and oral evidence printed.

Mr. T. R. VENKATARAMA SASTRI, Advocate-General, Madras.

Written statement.

Preliminary remarks.

That there is delay, in some cases very great delay, in the disposal of suits and appeals, will be readily conceded. It is perhaps difficult to fix an exact period of time as that within which suits, appeals, etc., ought to be disposed of, but it is sufficient to recognise that there is delay and that it requires to be remedied.

The questionnaire, while not oblivious of the human factors, proceeds largely on the view that changes in the substantive and the adjective laws might help towards more speedy disposal of litigation. That something may be achieved I do not deny or doubt, but I frankly express my apprehension that not much can be achieved by activities in that direction. It may be worth examining, independently and for itself, what changes may be introduced in the laws, but no change which does not otherwise strongly commend itself as just and necessary should be made merely in the hope that it may conduce to speedy disposal of cases.

Now turning to the laws—personal laws cannot easily change, nor in a day. Changes in these laws must be a matter of slow growth, the result of changes in popular sentiment and feeling leading to a demand for legislation. Some changes in the Hindu Law may be eminently useful for speedy disposal of cases or for even wholly avoiding litigation. But they are not easily made. Recent British laws such as the Transfer of Property Act are changed more easily, but there must be more to be said in favour of the changes than that they will secure despatch in the disposal of cases and the clearing of files in courts. Even in adjective law, changes may be advocated only on the ground of their just and beneficent effect on the administration of justice.

The human factors operating to delay the disposal of cases are vastly more important.

The judge will easily appreciate the necessity for a just and speedy disposal of causes. He has no interest in delay. It is he who has, by a wise choice of ways and means, to educate all the other human factors involved in the matter.

The legal practitioner will have no difficulty in appreciating the need of quick disposal, but he has to depend on his client. The client often instructs him to file a suit without having all the materials himself and begins to gather them only when the case is posted for hearing. Until the parties are educated out of this habit of procrastination to the last hour by the combined efforts of the judge and the practitioner, necessarily a slow process, a certain amount of delay is inevitable if justice is to be done. On the other hand, there are cases in which one party is desirous of speedy disposal and the other party stands to gain by delay and takes all possible steps in the trial court and in the court of appeal to impede the progress of trial. It is only the care and vigilance of judges that can foil these attempts. If these manœuvres always failed, they will soon be abandoned. The success that sometimes attends these efforts leads to their repetition.

There is another human element which might immediately or almost immediately be reformed if the Judges take the matter vigorously on hand. The subordinate establishment in courts, is believed to be generally slack in work and is in some cases suspected to be dishonest. A strict and vigilant control may easily reform this element at an early date.

I am not sanguine of achieving much in the direction of obviating the delay in the disposal of civil litigation by the means suggested in the questionnaire. Yet something may be achieved, and I proceed to deal with the matters raised in it under different heads.

Recruitment.

I have no change to suggest in the mode of recruiting district munsifs. I can suggest no special training for them. They are generally members of the Bar who have about 5 years standing before they are appointed. It would be difficult to suggest any particular test or training to make the recruitment more satisfactory. The character of the recruitment depends wholly on the care with which the selection is made by the High Court.

The subordinate judges ought not to be recruited straight from the Bar. They should be appointed from among district munsifs by promotion which ought to be not a matter of seniority but one of careful selection by merit. Direct recruitment gives dissatisfaction to the district munsifs as depriving them of their legitimate chances of promotion.

The district judges ought to be mostly appointed by promotion from among subordinate judges, again by a process of selection by merit, not by mere seniority. I am not personally for shutting out all direct recruitment for the place of a district judge. I concede as true generally that the best members of the bar may not accept a district judgeship and those who may be willing to accept the place may not always be in point of merit above the members of the service eligible for promotion. It must however be said that the position of a district judge may attract promising members of the bar and direct recruitment ought not to be shut out altogether.

As to recruitment to the High Court, qualifying conditions may be laid down but the rule of proportion must be removed. The rule that one-third of the judges should be members of the Indian civil service and one-third barristers is an antiquated rule which has no justification in the present circumstances of the country. There ought to be no rule that a member of the Indian Civil Service as such is entitled to a seat in the High Court. Nobody suggests that a person duly qualified by his training ought not to be appointed merely because he happens to be a member of the Indian Civil Service. The rule that the Chief Justice of the High Court should be a Barrister is no longer needed and should likewise be abolished. In many cases, a judge with experience of Indian conditions may make a much better Chief Justice than one directly imported from Great Britain.

Transfer.

I do not think justice is impeded in this province by a too frequent transfer of judges. The district munsifs are transferred once in three years as a general rule and on the whole it is deemed wholesome and desirable. The sub-judges and district judges are not transferred so frequently. While too frequent transfers might be deprecated as undesirable, transfers are necessary to avoid the inconveniences arising from the formation of local attachments. The matter may be left to the discreet exercise of the power by the authorities concerned, having due regard to the needs and circumstances of each particular case.

Efficiency.

It is impossible to suggest any standard of efficiency for judicial officers as regards the amount of work. The quarterly returns have done little good and much harm and may well be abolished. Their retention will, in many cases, continue to divert the attention of judges from the work they have to do to the task of making up satisfactory returns, notwithstanding every assurance that the figures in the returns will not be taken as truly indicative of the quality or quantity of work done.

I believe that the High Court has assigned to each of the judges the duty of scrutinising the judicial work in two or three particular districts. If this supervision is made more real, if the judge of the High Court occasionally goes round and inspects the courts, such inspection together with the impressions formed from judgments of such courts will enable the High Court to form a true estimate of the nature and quality of their work.

I should also suggest, as my friend Mr. Varadachariar has done, the desirability of the Inspecting Officer taking the local Bar as a whole into his confidence. There need be no apprehension that the Bar might mislead the Inspecting Officer. It is not perhaps realised, it is nevertheless a fact, that it is the bar that even now largely contributes to the formation and dissemination of correct estimates of the worth and work of individual judges.

Concentration of Courts.

This is not really the cause of any delay in the disposal of work. The judges, as far as I am aware, do not wait for practitioners without doing any other work. So long as the court has work to do, it does not much matter in what order the day's work is done.

The dispersal of courts will weaken the Bar and the wholesome influence which a strong Bar will have in the administration of justice. As for adjournment of work, it may not seldom be granted for practitioners coming from other places also. Cases now wait less and less for particular practitioners and as more practitioners handle the cases, adjournments for practitioners will become even less. A certain amount of discretion must be allowed to the judges in the matter of these adjournments. A junior practitioner who is compelled to conduct a case against his will may waste more time in order to give his senior time to come and take charge of the case. And the senior may also help to shorten the case by giving up unnecessary points and confining himself to the essential ones—a responsibility which the junior may not be willing to take.

Jurisdiction.

I am against conferring exclusive jurisdiction on the village courts. They are now vested with jurisdiction, not exclusive, to the extent of Rs. 50, or with the consent of both the parties, to the extent of Rs. 200. Village courts do not, so far, seem to have commanded the confidence of the public and resort to village courts has in the past been meagre.

The suggestion that the sub-registrars should be vested with small cause jurisdiction does not strike me as hopeful of satisfactory results. They have neither the advantages of the local tribunal which might do speedy justice unhampered by technicalities nor those of regular tribunals presided over by trained men.

The district munsif's jurisdiction may be raised to Rs. 4,000. The sub-judges will, as now, have unlimited jurisdiction. Appeals from the subordinate judges to the district judges might be abolished, such appeals lying straight to the High Court. Appeals from the district munsifs will lie as at present to the district judges but with power to the district judges to transfer them for disposal to the subordinate judges. The district judges will do (besides sessions work) miscellaneous work such as probate, succession certificate, etc. The transfer of this miscellaneous work from the district judge to the sub-judge will not be viewed by the public as unsatisfactory, but it is believed that the district judge will have time to do miscellaneous work and to do it as expeditiously as it ought to be done. Statutory provision may however be made for empowering the district judge to transfer such work to the subordinate judges in cases in which it may be deemed necessary.

The establishment of small cause courts to do small cause work exclusively so as to relieve the ordinary courts from small cause work may on the whole be satisfactory. One suggestion may be made to make them more popular. These courts instead of being located at one particular place so as to permit of a just complaint that they are very far away from some places within their jurisdiction may be made to sit at two or three different places within their jurisdiction so that the local cases may be disposed of at the nearest centre at which the court may be temporarily located.

The arrangement above suggested may throw on the district munsifs more work than they do at present and it may also throw a little more work on the High Court. Though the question of increasing the number of courts is not a matter for this committee, it may be mentioned that the proposal now being considered in Madras, namely, the employment of a number of sub-judges and district munsifs temporarily for the purpose of relieving congestion in particular localities will help to solve possible difficulties in the arrangement above suggested.

Appeals.

I do not think that appeals are now granted in too many cases.

Second appeals cannot be said to be *frivolously* filed. A certain number of cases are no doubt filed with the object of applying for stay of execution and so gaining time if possible. The only remedy for this evil is vigilance and care on the part of the judges. These appeals will naturally cease if they are uniformly dismissed or the attempted delay is defeated by a refusal of the petition for stay.

The insistence on the deposit of the decree amount as a condition precedent to the filing of all second appeals will be felt to be harsh and unjust.

There is already the rule that no second appeal will lie where the suit is of a small cause nature and the value is not over Rs. 500. Rs. 1,000 will be too high a limit.

Suits for land and for the enforcement of mortgages are not, for one thing, properly judged by their nominal valuation; and for another, they often involve important questions in which other parties are interested and restriction of second appeal in such cases will be found to cause great hardship.

Incidentally one may add that this very consideration prevents the transfer of the suit for sale on simple mortgages to the list of small causes.

Connected with this is also the suggestion that all the rights and interests in mortgaged property might be brought to an end on a sale of mortgaged property, the rights in the property being replaced by rights in the sale proceeds. Except in cases where all the mortgages are ripe for discharge, such a course will be impossible. Working out the rights of mortgagees in one suit is too complicated a problem to be made the subject of change merely for the sake of avoiding delay in the disposal of suits.

Letters Patent Appeal cannot be entirely avoided. It now exists in second appeals and must remain. In small cause revisions, there is no great harm in making the decision of a single judge final. In interlocutory matters which are justly made the subject of revision, an appeal from the decision of a single judge to a bench must be allowed. The reason for this will be made clear under the next head of the limits within which revision petitions ought to be allowed.

Revisions.

The right to file a revision petition is abused in the largest number of cases. Matters which ought properly to be set right only in appeals, such as orders refusing to allow trivial amendments of plaints or written statement or directing the trial of preliminary issues or matters which the legislature had made final, such as appellate orders on interlocutory applications for injunction or receiver, are often made the subject of revision; the trial of the suit is hung up by applications for stay; and days are wasted in lengthy arguments when they should really be disposed of on the ground that they are not just matters for revision. At the same time, there are some important matters in which great, and sometimes even irremediable, hardship may be inflicted by the denial of immediate revision. That no revision should be allowed where it is remediable in the final appeal is a sound working rule in many, nay, most cases, but that cannot be said to be an invariably correct rule. A sub-judge insisted on court fee being paid on the value of a temple—the amount required to build it, when the claim was in respect of the right to manage the temple. The plaintiff may no doubt refuse to pay, have his case dismissed

and take the matter in appeal and the appellate court may reverse the judgment and remand the suit, but the High Court justly felt it to be a case that called for immediate interference. There is no difficulty in distinguishing between a case which calls for immediate revision and a case which ought to be left to the operation of the general rule that there ought to be no revision in interlocutory matters where they can be set right in the ultimate appeal. What is needed is not any legislative change but judicious exercise of discretion.

Where these revision petitions are disposed of by a single Judge, a Letters Patent Appeal must be allowed, both because of the importance of such cases, and because the points will ultimately come before Benches of the High Court who ought not to be bound by the decisions of single Judges on the previous revision petitions.

Insistence on payment into court of the amount of the decree before a revision is admitted may work hardship in some classes of cases. Even in the case of applications to set aside *ex parte* judgments, where there is now a statutory provision for directing a deposit of the amount, the provision is not generally insisted on.

Work in the High Court.

I would suggest that printing may be dispensed with in all cases in which the court has not to go into the evidence. If parties care to print any record for the purposes of the appeal, let them do so on their own personal responsibility.

First appeals (Regular or Miscellaneous) in which all the evidence has to be gone into are the only ones in which the records should be translated and printed at the request of parties. Even in these cases, if the parties will translate and print the records themselves, such printed records being exchanged and accepted as correct between the parties and a sufficient number of copies being supplied for the use of the office and the courts, they may be permitted to do so.

The granting of stay should be exercised sparingly and only when the hardship caused will be too great to set right after the disposal of the appeal. It may be said that the existing provision for the stay of execution is exactly to this effect, but as a matter of fact, stay is granted in too many cases without sufficient regard to the principle that no stay is to be granted unless it is required to avert irreparable loss to the appellant. The right to stay execution may be generally left to the court which passed the decree, though the power of stay ought not to be entirely denied to the appellate court.

Procedure in suits.

I see no need for any change in the procedure for the trial of original and small cause suits.

Pleadings.—The pleadings are drafted in proper form and in accordance with the Code of Civil Procedure and the provisions of Orders VII and VIII are duly followed.

Service.—I do not think that the changes suggested by the questionnaire for expediting the service of summons on the defendant are really an improvement on the present system or that they will conduce to expeditious disposal. Notices by post may be evaded or may be fraudulently reported to have been served. Service by plaintiff himself will lead to charges of fraud, true or false. The village officer cannot be charged exclusively with this duty and he may be, or may be charged with being, a partisan. The plaintiff's vakil will refer, and can only refer, in most cases to the plaintiff himself. Far from ensuring speedy disposal of cases, the suggested changes might lead to an increase in applications to set aside *ex parte* decrees and orders. Service by post might be directed as a supplementary mode of service and village officials might be specifically directed to assist the process-servers. Such expedition as may be attained in the service of processes and thereby in the disposal of the cases themselves has to be achieved by a stricter and more rigorous control over the establishment by the judges themselves. Delay in the service of processes and the progress of execution proceedings is widely suspected to be due to the dishonesty of the subordinate establishment and many people in the

mofussil believe that the judge does not apply his mind to the question of reforming his establishment and making it more efficient in the discharge of its work.

Once service is properly effected on the defendant, he may be required to give a registered address, service at which might be deemed to be good service for purposes of the suit and execution at all later stages. The parties may be at liberty to change the registered addresses, whenever necessary, by proper notice to the court.

Issues.—Issues framed by consent of parties are seldom carefully framed. At the trial, there is often need for re-casting the issues. The judge must frame the issues himself after hearing the parties. A draft of the issues by consent of parties should not dispense with the scrutiny by the judge. Care bestowed on the framing of the issues might save much time at the trial.

Preparation for trial.—The provisions of orders X, XI and XII are not largely taken advantage of in the mofussil courts. A more extensive use of the provisions for discovery, interrogatories and admissions might be encouraged by the judges.

Examination of both parties before the commencement of the trial may sometimes be justly open to the criticism of compelling the parties to disclose their evidence; but when the trial actually commences, and if the party himself is going to be examined, the court may be given the power to insist on his examination first. It is within my experience that the party sits in court, examines his witnesses first and comes last, filling up gaps in their evidence. He refuses to examine himself first, and most judges express themselves as not entitled to insist on their immediate examination and as being entitled only to draw adverse inferences, if the facts warrant them, after the close of the trial. If the party is examined first, the court will often be able to judge of the case better and the parties or rather their legal advisers may not unnecessarily examine witnesses to contradict what the party himself has admitted.

I do not however think it advisable or necessary to postpone the summoning of witnesses for the trial till after both the parties have been fully examined. Nor can I agree to any limit being placed on the number of witnesses that a party may examine or the time for the examination of witnesses. If the judge performed his duty of disallowing irrelevant questions, instead of allowing all questions to be put and reserving the right of scrutiny and rejection to the time of writing judgment, as much saving of time as is legitimate may be secured.

Order XVI, rule 16 is not strictly enforced in all courts. A strict enforcement of it might result in the saving of some time at the trial.

Representatives.—Representatives cannot be compelled to come forward on pain of being bound by proceedings conducted in their absence if they were aware of the proceedings. Even with the restriction and safeguard contained in the last clause, it is not just to compel them to petition to be joined as parties. Their knowledge of the pendency of those proceedings will always be a matter of controversy. When the interested party takes no steps to prosecute the proceedings and may not prosecute them at all, there is no reason why the representatives should move in the matter.

Guardians.—There is no objection to a number of possible guardians being named and served at the same time and one among them being chosen at the hearing as the best fitted to safeguard the interests of the minor.

Preliminary issues.—Issues going to the root of the case are not usually tried as preliminary issues. The wide criticism of appellate courts against the procedure when applied to inappropriate cases leads to the impression that appellate courts view it with disfavour and to a dislike to adopt the procedure even where it is appropriate. The lower courts must be encouraged to try preliminary issues and then in cases of doubt to proceed to try the other issues before pronouncing final judgment on the whole case.

Date of hearing.—The dates of hearing are fixed in consultation with the pleaders. But this is done at a time when the vakil himself does not know whether his client

can or will be ready on the date specified. The dates are fixed with reference to known or foreseen causes of absence or other difficulty of the practitioner himself. That the dates are fixed after previous consultation with the pleader does not prevent further delay or applications for adjournments. There is a recent practice on the Original Side of the High Court which may well be tried by the judges in the mofussil also. On the last day of each week, in the afternoon, the judge in consultation with the practitioners settles what causes he will take up and try during the succeeding week, ascertaining roughly what time each case may occupy. So near the time of the trial the clients and the practitioners must be able to say whether they will go on with the case or will require an adjournment.

Insistence on written applications for adjournment and payment of day costs does not act as a deterrent on applications for adjournments.

Trial.

Trial does not go on invariably from day to day. It is not seldom adjourned before completion.

The judge himself has to attend to miscellaneous and interlocutory work. This might itself take a very appreciable portion of each day. At the end of a quarter, the judge must do work which will make his return of work to the High Court satisfactory.

Besides the reasons mentioned above, which are from the judge's point of view, the client may himself be unprepared to go on ; important witnesses may not have come ; witnesses may have come and gone away on business and adjournment may be necessary. And the judge sometimes reluctantly, and sometimes willingly, for it may serve his purposes also, grants the adjournment. A change in the practice thus going on hitherto must be made gradually. The clients require to be slowly educated by the judge and the practitioner to see the need for the trial and so going on from day to day. The clients most often file suits before they are ready with all their evidence. They go to sleep after the filing of the plaint and wake up only when the cases are ready for trial. If the judges were instructed to refuse all adjournments with sternness, great injustice may be done. For some time until the clients and the practitioners become accustomed to the new rule and alive to its demands, applications for adjournments will have to be disposed of with care and not too strictly. When the clients have grasped the point of view which requires them to be prepared for the trial of the case at any time after its institution, the court will find it easy to be more strict.

Execution.

I agree to the changes indicated in questions 53 to 55, 63 and 64.

The 12 years limit for execution of decrees may remain, but the decree may be executed without the necessity to keep the decree alive by periodical applications. If however, the repetition of applications is retained, the date of the last order on the previous application should be the starting point of limitation for the next application.

It is desirable to restrict payment out of court to particular modes so that prolonged investigation of a plea of payment may be avoided.

I assent to the suggestion in the first part of question 59, but not to the second part. The second proviso to order XXI, rule 16 should not be repealed. No execution by a judgment debtor who becomes the transferee should be allowed without further investigation of the liability as between the judgment debtors.

Order XXI, rule 21 may well be deleted.

Order XXI, rule 22 may also be deleted except in the one case of application for the arrest of the judgment debtor after the lapse of a considerable time since the previous application.

Stay of execution does cause some inconvenience but greater care in ordering a stay, not the award of exemplary compensation, is the proper remedy. While

the courts may be given power to demand deposit or security before granting injunctions staying execution of decrees, they must have power to grant unconditional stay in appropriate cases.

Evidence.

Except where the court sees reason to have an attesting witness called, the necessity for calling attestors to a registered instrument may be dispensed with.

The same result may be achieved by taking away the rule as to the necessity for a number of attesting witnesses in regard to mortgages. There is no reason to make a difference between mortgages and sales in regard to the need for attestation.

Secondly evidence may be permitted to be given in the manner suggested in question 73.

I agree to the proposals contained in questions 76 and 77. I consider the doctrine of part-performance is subversive of the provisions of the Transfer of Property Act as to creation of titles in immovable property. This was the view till recently held in all the courts. Men of different temperaments and even the same man in different moods may entertain diverse views in regard to this matter. I am on the whole inclined to prefer the stricter rule of the Transfer of Property Act as in the long run fostering the habit of embodying important transactions in writing.

The solution of obligations created by a registered document only by a registered document is an unnecessary innovation.

I cannot assent to a special rule of registration for documents executed by marksmen, as generally attestations will be secured in the case of such documents, and that is a sufficient mode of securing proof of their genuineness.

Miscellaneous.

Notwithstanding that benami transactions prove disastrous to the executants themselves, they show no sign of disappearance in India. Great injustice may be done by ignoring them at one stroke. This is the reason why I feel very reluctant to accept the suggestions in questions 66 and 81.

I do not think the remedy suggested by question 82 for putting down frivolous suits can be accepted.

I doubt if there is any need for a change in the law of champerty or maintenance as it obtains in India now.

Mr. T. R. VENKATARAMA SASTRI, Advocate-General, Madras, called and examined on Tuesday, the 23th July 1924.

Chairman.—*Q.* I see from the interesting paper you sent to us that you are not very hopeful that much good can be done on the lines of our questionnaire ?

A. I mean that much of the delay that now exists is not likely to be solved by following the lines suggested in the questionnaire.

Q. Then are there any aspects of the matter that you think we ought to consider which are not sufficiently attended to in these questions ?

A. I cannot suggest anything apart from the matters referred to in the questionnaire. I personally attach more importance perhaps to the personal or the human factors that are entailed in the matter of delay.

Q. That is to say such things as supervision of officers or that more care should be taken in selecting them or some thing of that sort ?

A. Yes.

Q. There is more to be done in that way than by changing the method of procedure, etc.?

A. I think so, but some changes might usefully be made.

Q. I see you say in your paper that no change which does not otherwise strongly commend itself as just should be made merely in the hope that it might conduce to speedy disposal of cases. I am not quite sure whether this is a correct expression of your intention. I understand you do not believe in making any amendment that would be unjust merely for the purposes of expediting disposal.

A. Certainly.

Q. Now, with regard to the specific points that are dealt with in your paper. You point out that while legal practitioners may be desirous of having reasonable disposal they cannot do so as they meet with great difficulty on the part of their clients. I suppose you will agree with me that specially the junior men who are not very successful find it very difficult to stand up to their clients ?

A. I should perhaps say that not only the juniors but seniors also sometimes feel great difficulty because the matter has to be supplied by the client and unless the required matter is supplied to the lawyer he finds it very difficult to expedite.

Q. Very often it goes much further than that. Lawyers are instructed sometimes by their clients for the purpose of causing delay ?

A. Yes.

Q. I think some thing ought to be done on the part of the bar to be a little more independent not merely towards the courts to which they usually are quite independent but particularly towards the clients ?

A. Yes.

Q. I see you say that in this province the subordinate establishment of courts is believed to be slack and in some cases suspected to be dishonest. Does that mean that the people who want execution petitions attended to or who take dates according to their convenience have to give gratifications to the subordinate officers ?

A. That sometimes happens, but what I am thinking is this, that notices are not served properly.

Q. You are thinking of the process-serving establishment then ?

A. Yes, subordinate establishment that serves processes, etc.

Q. You do not mean then the clerical staff of the courts ?

A. That may be in some cases, but I did not think of it when I wrote the paper.

Q. Now as regards the recruitment of district munsifs, do you think that their selection is made on the right principles ?

A. Principles are all right.

Q. I mean the care with which the selection is made ?

A. In this province the selection is made by the High Court.

Q. Do you know how they select ?

A. At one time the appointment was in the hands of one Judge—a senior Civilian Judge—and the other judges had to give him the names and he had to decide the matter finally but from some years past—I cannot exactly give the date, may be about ten years or possibly more—the practice is that all the Judges sit together at a meeting and select 30 or 40 names at a time and the Judge in charge of the appointments makes the appointment from amongst those selected by the Judges.

Dr. DeSouza.—*Q.* I suppose there are orders of Government which prescribe the manner in which selection of munsifs is to be made. Are you aware of any such papers ?

A. I am not aware of these orders except that in the Legislative Council of this province a question was raised that sufficient attention is not paid to the claims

of different communities and the Law Member was asked to speak to the High Court Judges on the subject.

Chairman.—*Q.* Are not the conditions for selection of district munsifs laid down by the High Court ? Are they not required to be of a certain standing ?

A. They are required.

Q. What is the standing ?

A. I think three years' practice at the bar before they apply.

Mr. Justice Stuart.—*Q.* At what age ?

A. 30 to 35.

Q. As late as that ?

A. Yes, but in these days it is 32.

Q. Is that satisfactory ? When such a man has reached the age of 55 he will not get his full pension and there are no good prospects for him ?

A. I also see the inconvenience. I certainly like the appointments to be made earlier.

Q. One point I have not fully understood. Once a panel is made, is it then left absolutely in the discretion of that one judge to make the selection from that panel ? Suppose he has got 15 names, then do you mean to say that he can select any one he likes for the first vacancy and the remaining are left out altogether ?

Chairman.—I think you are not quite sure about these facts.

A. Yes.

Dr. DeSouza.—What I understand is that a panel is made—say of 30—by all the judges of the High Court sitting together at a meeting and then it is handed over to the English judge. Now the English judge has no discretion to select any one, but he proposes the names from that list as the time comes.

Mr. Justice Stuart.—He has nothing to do with the qualifications.

Dr. DeSouza.—No.

Mr. Justice Stuart.—*Q.* Do these men get interviews ?

A. I do not know.

Q. Before they select a man to this panel not a single judge has seen him ?

A. That is not likely. Some of them are practitioners and most of them are known to the judges. A particular judge may suggest a particular name.

Q. That will not be the case with outside practitioners ?

A. Their applications are sent through the district judge.

Q. That is merely what the district judge has got to say and the High Court judge knows nothing about them ?

No reply.

Sir T. Desikachari.—*Q.*—How has the selection been of late—during the last seven or eight years ?

A. My impression on the whole is that the older system was good.

Q. Your impression on the whole is that the later selections have not been so good as in previous years ?

A. Yes.

Chairman.—As regards subordinate judges, you think that they ought to be recruited by promotion from munsifs and that if a large number of them are recruited from the Bar, munsifs have not sufficient prospects.

A. Yes.

Q. In the same way, the district judges ought to be mostly appointed from the subordinate judges by merit and not by seniority ?

A. Yes.

Q. You do not want to shut out all direct recruitment either from the Bar or from the Civil Service, but in your opinion the majority of them should be recruited by promotion, on merit, from the subordinate judges ?

A. Yes.

Mr. Justice Stuart.—*Q.* What is the present number of subordinate judges who are promoted as district judges ?

Mr. C. V. Viswanath Sastri.—Four from the provincial service, three from the Bar, and eighteen from the Civil Service.

Q. You would like to see that the number of provincial service men, who are promoted as district judges, should be raised ?

A. Yes.

Chairman.—As regards recruitment to the High Court, you are against the rule of proportion, *viz.*, one-third, as is given in the present Government of India Act and you think that the post of the Chief Justice should not be restricted to a barrister ?

A. Yes. Possibly I may say that the Bar Committee has recommended the revision of the one-third proportion—this proportion for the Barristers is not necessary.

Q. I think that there was some resolution in the Legislative Assembly at Delhi or Simla, on this subject. Now, as regards transfers, you do not think that there are too many transfers as far as you can see ?

A. That is my impression,

Q. Transfers are made because they have to be made as a rule. Sometimes you get unavoidable transfers ?

A. Apart from that there is a fair rule that district munsifs are allowed to be in one place for three years and at the end of three years they are transferred.

Q. Did you find lately that owing to leave, etc., the Government or the High Court have had to make transfers more frequently than before ? There is a very good rule but they are not always in a position to follow it.

A. Yes, that is right.

Q. You think that quarterly returns of the amount of work done have, instead of doing good, lately done a good deal of harm, that is to say, the judge looks to turning out good statistics. He takes small cases and disposes of some of them, and does various other things ?

A. I am for abolishing the returns entirely.

Q. Of course one appreciates that, but you must have some control over the judge as to the quantity of work he does ?

A. I think there are other modes to see as to how much work is turned out, as for instance supervision by the High Court.

Q. Whatever the mode, you have to get some accurate figures. You must know what his pending file is in order to transfer some of the cases from his file. You cannot abolish the statistics ?

A. Whoever is responsible for the sending of returns, at the end of the quarter his mental attitude naturally induces him to care only for statistics.

Q. The mental attitude that induces him may be bad, but you cannot get rid of the statistical returns ?

A. Yes, in some form that information will have to be supplied.

Q. You point out that notwithstanding every assurance that the judge would not be judged from the mere figures, you cannot make him believe it.

A. I think, notwithstanding an assurance that the number given in the return of disposals is not really the test of the quality, they rather suspect that it is necessary to look to the amount of work turned out at the end of the quarter.

Mr. Justice Stuart.—*Q.* Is not that a fault of the inspecting officer. I have a certain amount of experience and it is nothing unusual for me to read the quarterly returns. If I notice that you have only turned out so many cases but one of them is a very long case, I must congratulate you on having done it so well. If the inspecting officer looks in that way is there any harm ?

A. No.

Q. Then you have to correct the inspecting officer and not the returns.

Chairman.—*Q.* I suppose the form in which the return is sometimes drafted is not very well drawn up. For example, if a man can in the last few days of the quarter deliver a judgment that has been hanging on far too long, it never comes in the return at all ?

A. That is exactly the case.

Q. As regards the form of statistics, it may be that the form in which statistics are required is sometime a temptation to the individual officer and that might be looked into and corrected if necessary ?

A. Possibly.

Dr. DeScuza.—*Q.* Would not the return be satisfactory if it shows cases pending more than a prescribed period and the reasons why these suits have been pending for such a long time ? The return may show cases pending over six months and the reasons for the same.

A. I do not mind how the whole thing is devised, but the judge should not feel at any particular stage of his work, that he should take more work and show so much disposal. This idea produces anxiety and affects the quality of the work he does.

Mr. Rao.—*Q.* You mean the explanations that have to be submitted and not merely the returns ?

A. Yes.

Chairman.—*Q.* In fact when a case becomes explanatory—as we call it in Bengal —they begin to look at it and dispose of it sharply ?

A. That is so. I may give, for example, a case in which a long time has elapsed before a judgment is ready for delivery. The case is sometimes posted for further argument. Possibly on the day on which it is posted there are no arguments, but that is done for showing that the judgment was delivered only fifteen days after the close of the trial and not after a very long time.

Q. Have you ever known of cases dismissed *ex parte* and restored straightaway in order to be deemed completed for statistical purposes ?

A. I have heard of such cases.

Q. You suggest that the inspecting officers should take the local Bar into their confidence. That is to say, either the district judge or the High Court Judge, whoever inspects the court in a district, it is a good thing to let it be known that the local Bar can come to him and they should be afforded every facility for meeting him and discussing things. Is that what you mean ?

A. Yes.

Q. Please tell me, have you any system by which particular districts are supervised by particular High Court Judges ?

A. I think there is no such system. That is my information.

Q. Can you tell me whether the Judges of the High Court go and conduct personal inspections in the lower courts ?

A. I think that was done several years ago once by Sir Leslie Miller.

Q. Has there been any inspection since then ?

A. I don't think there was any inspection since then.

Q. Apart from that, has it been the tradition to make systematic inspection by Judges of the High Court here ?

A. No.

Mr. Justice Stuart.—*Q.* You don't try to work out a method as is done in other provinces by which every district in the province is inspected by a High Court Judge once in every three years ?

A. I don't think there is any such rule.

Q. I am not particular about a rule. Sir Leslie Miller made some inspections but you have no recollection of any other High Court judge having ever inspected any courts ?

A. I think none has taken place since.

Chairman.—As regards concentration of courts you don't think that any further dispersal of courts should take place.

A. There are some cases in which for the present courts of even different districts are centred in one place. For instance in Madura there are several of them concentrated now. A slight change in that respect may be made and I think it is in contemplation to do so.

The idea that each place should have if possible one court and that should be within its jurisdiction is not an idea which need be worked in this province.

Q. You think that in some places, for instance Madura, there may be room for further decentralisation, but generally you think not ?

A. Yes.

Q. You don't think that further decentralisation would lead to greater expedition ?

A. No.

Q. I see you say that a junior who is compelled to conduct a case may waste more time than it is worth and that it may be an economy of time to wait for the senior.

A. Yes, sometimes.

Q. Please tell me the position with regard to that. First of all, in an ordinary case, have you ever had as many as 5 vakils engaged on one side ?

A. I think not.

Q. At the most how many will there be ?

A. One in many cases, two in some cases, and rarely three.

Q. In an ordinary case, where there are two, a senior and a junior, one appreciates that the client expects the senior to be there and conduct the case. In those cases, is the junior paid a proper fee or is the junior merely nominally engaged and does all the money go to the senior ?

Mr. C. V. Viswanatha Sastri.—The complaint among Madras juniors is that they get nothing for their work.

Chairman.—*Q.* I am not speaking of Madras itself or the central courts. I am thinking of the mofussil courts. Is the junior only nominally there or is he properly paid ?

A. My impression is that he is a nominal junior in the case. My friend Mr. Viswanatha Sastri will be able to supply the information. He knows more than I do.

Q. Do you think he gets paid something at least ?

A. I think so.

Q. Being paid something, is he as a rule present to conduct the case if the senior is not there ?

A. I think it is more often the junior that works and the complaint is that he does all the work and is not sufficiently paid. I think that in those cases in which the judge insists upon going on with the case without waiting for the senior, the juniors do conduct the cases.

Q. If a court below insists that the case should go on and that it would not wait for the senior, what does the High Court do ? Is the lower court backed up by the High Court ?

A. Certainly.

Dr. DeSouza.—Q. Under the new system are the juniors paid proportionately or are they paid only starvation wages ?

A. I can't say there is any difference between the old and the new. If the system of making the junior go on with the case comes into vogue I think they must be paid adequately ; otherwise they would not undertake the engagement.

Chairman.—Q. Let us come to the question of jurisdiction, if you please. First of all I understand you have got a system of village courts in Madras and you are a great deal in advance in this matter. I understand they have got concurrent jurisdiction up to Rs. 50 and then with the consent of the parties up to Rs. 200. I also understand that they have got no exclusive jurisdiction ?

A. No.

Q. Is there any revising authority or revisional authority over these village courts ?

A. I think the district munsifs have some kind of supervision over them.

Q. Suppose a person brings a case of say Rs. 50 before a village court and it is not a proper case for it, can the district munsif transfer this case to his own file ? Can he interfere ?

A. I do not remember whether he can interfere or not.

Q. When the village court gives a decision can it be modified on revision by any body ? Does the district judge, or the district munsif or the subordinate judge or any body exercise revisional powers over village courts ?

A. I do not think any one of them can interfere.

Q. Then if a plaintiff likes to bring his case, say of Rs. 50, before a village court, the village court has got to try it and there is no one who can interfere with its decision ?

A. No. But the High Court has the right to interfere, under section 115, or under the High Courts Act.

Q. Now, your general opinion is that village courts do not seem to have commanded confidence of the public and that resort to them has been meagre ?

A. Yes.

Q. But I understand that a vast mass of business has been done before village courts in this province and the work before district munsifs has been enormously reduced. May I request you to look into the report ?

A. In fact when I wrote my paper that report was not with me.

Q. They seem to have done a vast mass of work and have given great relief to district munsifs' courts ?

A. That report was not before me at that time.

Q. You do not believe in sub-registrars being given civil jurisdiction ?

A. No.

Sir T. Desikachari.—Q. Some of them are graduates ?

A. Yes at present there are graduates, but latterly there have been appointments of non-graduates.

Q. You know perhaps that they try suits in connection with the registration of wills ?

A. Yes they do.

Q. And they generally make enquiries with reference to the execution of documents ?

A. Yes they do, but it struck me that they have no experience of trying suits in the presence of parties just as regular courts do.

Chairman.—Q. Now, let us come to the more important class—your district munsifs. I understand they try suits up to Rs. 3,000 ?

A. Yes.

Q. And you think it may be raised to Rs. 4,000 ?

A. Yes.

Q. And then you suggest that subordinate judges should continue to have unlimited jurisdiction ?

A. Yes.

Q. Now, you think that appeals from subordinate judges to the district judge should be abolished and should lie to the High court ?

A. Yes.

Q. And that appeals from district munsifs should lie to the district judge and that he should have the power to transfer them to subordinate judges ?

A. That is the present rule.

Q. I take it that the number of cases between Rs. 4,000 and Rs. 5,000 is not very large ?

A. I think so.

Q. Of course if an appeal lies direct to the High Court on fact and law it is a better arrangement than an appeal lying first to the subordinate judge or district judge ?

A. Yes.

Q. Perhaps you think that every case that can be disposed of by one appeal should be disposed of by one appeal and the object should be to get rid, as much as possible, of these intermediate appeals ?

A. Yes.

Q. As regards small cases which are not under the Small Cause Courts Act, do you think our present method in India for dealing with this class of cases is at all satisfactory—the suit may be about a small piece of land ?

A. I think there must be some substantial point of law if an appeal to the High Court is to be admitted.

Q. That is what I want to know. Can you tell me how many appeals in this province are thrown out under Order 41, Rule 11 ?

A. I think it is 25 per cent. Do you want the total number of institutions ?

Q. I see 1,831 is the number of institutions in 1922. Now, can you tell me how many out of them were thrown out under Order 41, Rule 11 ?

A. 362.

Q. So the remainder is something like 1,469—I want to find out how many out of these were successful and how many were unsuccessful ?

A. 486 were unsuccessful, 116 were modified, 80 were successful completely and 7 were remanded. In 233 there was interference but in 486 there was no interference at all.

Q. So it means that two out of three—were thrown out as useless so that in 486 the respondent was brought before the court for no result whatsoever. Under our present system we accept the fact that we are going to be flooded with appeals because the client cannot be made to understand that there is no appeal on fact. We accept that fact and put up a barrier under Order 41, Rule 11 and we get rid of a certain number of appeals which one must respectfully suppose to be quite hopeless. What I suggest is that we do not in that way get rid of quite enough. I think the number should be much larger. 486 appeals were not successful after they had passed the Rule 11 test. It should be considered whether in the interests

of justice there should be a third hearing at the expense of the respondent with all the attendant delay of a year and a half or more ?

A. These cases are heard by two judges and considerable time is wasted. Sometimes the hearing goes on till four o'clock.

Q. Many of them are admitted or rejected ?

A. Many of these cases are admitted.

Q. If a case is heard under rule 11 and then it is admitted, do you not think that it will be to waste the time of the judge ?

A. What at present I am thinking of is that if you devise any method by which these cases are very carefully scrutinized and then the respondents are brought before the court I do not think any time would be saved by doing this but no doubt there is this satisfaction that the respondent who if not brought before the court is saved from the trouble of coming by the careful scrutiny.

Q. This is as regards simply taking more care in applying rule 11 but do you see any reason that in cases of small value the position should not be this? You have first of all a trial and then a first appeal ; if you want a second appeal you ought to be required to show some special reason, some indication of importance or some important and specially difficult point of law or something of the sort and the second appeal should be by special leave. At present if there is a point of law which the court below may have decided right or wrong, the tendency is to admit the case under rule 11.

A. But what the court is required to do is to arrive at a conclusion that *primâ facie* there is need for further investigation. The attitude at present in this province is to scrutinize very carefully.

Q. Looking from the point of view of the whole of India, as there are provinces where the results are much worse than in this province, do you think that there is any real objection either to alter Order 41, rule 11 or to make it clear that the court shall reject unless it thinks that the interests of justice demand a third hearing? Put in certain cases a limit say up to Rs. 500, and say that in such cases a second appeal should lie on points of law but by special permission. Do you think there is any objection to this principle ?

A. Fixing the limit up to Rs. 500.

Chairman.—Yes.

A. I think such a rule may be made. I see no objection in this.

Q. One more difficulty about cases under the Suits Valuation Act. You get land cases which may be of a given value but the real value is something more than that and therefore one would like to provide that the value for the purposes of jurisdiction should correspond to the real value. But if in any case you cannot get them coincide completely then the fact that the property is not properly valued would give a reason for granting leave to appeal. It would not shut out an appeal if there was a case for appeal on the merits.

A. Would it not be better perhaps, for this matter of second appeal, to fix the value at Rs. 500.

Q. Can you give any reason why in Madras land cases should not always be valued for all purposes according to the real value ? Is there any difficulty in fixing the correct value ?

A. I think this is done in order to avoid paying heavy court fees.

Q. Do you think that any attempt to make a distinction between cases under Rs. 500 and cases over Rs. 500 would be defeated by constant disputes as to the value, whether it is above or below ? It is very much better to give people another second appeal than to have too much litigation about value between the parties at the beginning ?

Mr. Venkatarama Sastri.—In order to get over that difficulty I will push down this figure of five hundred to a sufficiently low figure. At present, my impression

is five times the revenue which is to be taken as the value of the land is at least one-fifth or even below the real value. If you have hundred rupees as the valuation of a land in a suit, it will correspond to no less than five hundred rupees worth of land. If it is fixed at hundred rupees valuation under the Court Fees Act, the property may be worth five hundred rupees or even one thousand rupees

Q. You will fix five hundred in other cases, but in the case of land you will have it at one hundred and value in that way ?

A. Five hundred is the limit in all cases of small cause nature. So far as the other category is concerned if you say that you will draw a line for second appeals at one hundred rupees it will work to something like five hundred as the value of the property not to be subjected to second appeals.

Q. There is a power to give a special value to every class of case that cannot be theoretically valued. Then the High Court can fix a figure.

A. Yes that will work well.

Mr. Justice Stuart.—Q. Would you super-add that second appeals will be allowed only with special leave ?

A. Yes.

Q. I understood you to say that in certain suits, or suits for damages, under five hundred rupees, you would not allow second appeals at all, but above five hundred rupees only by special leave ?

A. I think the question put to me by the Chairman was that in those cases in which there is no right of appeal, special leave may still be given having regard to the importance of the case.

Chairman.—Exactly so.

May I put to you another suggestion. Do you think it would be possible in any way to strengthen the first appellate court to enable us to do for the small cases what we do for the large cases, *i.e.*, give as good a trial as we can, and then give a very good appeal and finish the case there ? Do you think that it will be possible to take away first appeals from the district judges and put them in the hands of what may be called 'benches' of two specially selected subordinate judges, who would deal with nothing except these first appeals, and who would have the right to state a case on points of law to the High Court, whenever they think it necessary, and if they differ ? Do you think it would be possible to deal with cases of small value—not of small cause nature—in that manner by giving a better first appeal, in the terms I mentioned, and then making it final ?

A. There will be no appeal by special leave ?

Q. No. But the bench will have the right to state a case on points of law, if they want to do so.

A. I shall, myself, have no objection to such a course being adopted, but I do not think that it would satisfy the clients, for they will think that they have been shut out from the High Court.

Mr. Justice Stuart.—Q. In the public interest we cannot allow unreasonable objections to prevail. I want to know from a lawyer of your experience whether it could be possible to have subordinate judges sufficiently competent to form such a bench ?

A. I do not see any difficulty in finding such a bench.

Q. Their opinion will be absolutely sound in ordinary matters and in extraordinary matters they could be trusted to state a case to the High Court ?

A. Yes, but there should be a proper selection. I may say that the suggestion seemed to me a novel one.

Chairman.—It is not novel. As a matter of fact in the eighties the Government of India had a mind to introduce it in the Punjab and in Bengal. Only they introduced that system in a bad way and that was not a system of specially selected senior subordinate judges. They had only, what they called, divisional judges,

At one time the Government of India and the Home Government did commit themselves to it.

A. I meant that it was novel to me.

Sir T. Desikachari.—You were saying that there are considerable practical difficulties in this province of making a proper selection, having regard to present conditions.

A. I said that it would be possible to find efficient material to constitute such a bench.

Dr. DeSouza.—You take the condition of things as they are at present. You take the state of feelings among the different communities here as they are at present. You take the reputation of the sub-judges at present. Having all these facts in view, as a practical man do you consider that the proposition that is now put forward is practicable ?

A. There will be considerable difficulty with regard to my province.

Mr. Justice Stuart.—There are difficulties with regard to everything.

A. The difficulty that I suggest must, from a practical point of view, be considered insuperable.

Chairman.—I understand that the difficulty you are really speaking of is the difficulty that arises between the Brahmin and the non-Brahmin. I mean that would be a question which would, you think, seriously affect the practicability of this proposal.

A. Yes. In addition to that a number of benches will have to be constituted.

Mr. Justice Stuart.—*Q.* If you make up your mind that such a bench could do the work, then somebody who knows the province has got to see carefully how the different places could be grouped so as to give to such bench a reasonable amount of work and how many such groupings could be made. If it turns out that there would be increase of expense after taking into account the amount of work that might be saved to the High Court, then it is up to somebody to make up his mind whether the improvement is worth the extra money.

A. There is one other matter. I am not sure that it would reduce the number of judges that will have to work in the High Court.

Q. You have noted they would have only to decide cases of disagreement and the cases which are referred to them on special points of law ?

A. Yes. You would not save a judge or two at all in the High Court by taking this course. There are the arrears, the amount of work that have to be done and the human material that you have got.

Q. The reduction might not come at once.

A. I think the calculation of the amount of work might perhaps not turn out to be exactly correct.

Chairman.—*Q.* In the mofussil courts do you think there is any real difficulty in insisting upon cases being heard *de die in diem*—that is to say that when a judge begins to hear a case, he will go on with that case until he finishes it, unless for some special reason there has to be an adjournment to hear one witness or whatever it may be ? Do you think it is impossible to cure the habit of judges taking a case for two days and then adjourning it for months and then take another case for two days and adjourn it for months and so on ? Don't you think it possible to put a stop to this practice of trying cases piecemeal as they sometimes do now ?

A. I don't think it would be impossible. But it will take time to get into practical working order.

Q. There is no reason, in your opinion, why both the clients and the courts should not be told that that is what they are expected to do, unless there are proper reasons to the contrary.

A. I mean so far as the High Court is concerned, appeals are posted and taken up in a certain order and disposed of. Until the previous case is disposed of, the next case is not taken up except in cases of emergency. In the mofussil, appeals

are posted to a particular date and if any appeal is not taken up on that date, it will be adjourned to a convenient date a month later.

Q. Don't you think that piecemeal arguments of an appeal must be most unsatisfactory from the bar's point of view ?

A. I mean to say that if the case is taken up, it will be argued and if not, it will have to be adjourned to some other date. Even in cases where arguments are begun it sometimes happens that cases have to be adjourned, because there are things which can't wait.

Q. What we want is that there should be a list of appeals and everybody should know that his case is on the top and that it will be the next to come on.

A. I have seen no difficulty so far as appeals are concerned. But with reference to suits what happens at present is that the case is adjourned if it is taken up and not disposed of on that date.

Q. The Code requires that when cases are once begun the trial should go on from day to day until it is disposed of. Do you think any real attempt is made in the subordinate courts to comply with that ?

A. In this province it generally goes on from day to day if a case is taken up.

Q. Do you find that that is the usual rule ?

A. I don't say that it is invariably so.

Mr. Justice Stuart.—*Q.* There are occasions when you can't do that. But do most of the officers make a genuine attempt to do that ?

A. I can only speak to a matter of that kind from my impression. Some judges do and some judges do not.

Dr. DeSouza.—*Q.* I find the total number of working days in Madras for district and subordinate courts is 221 days. I think in similar courts in other provinces that we have visited so far, the number is 255 ; and the reason for that is, I understand to be, that in Madras the subordinate courts and district courts have a vacation of 2 months while in other provinces we have so far visited the vacation is only one month. Is there any special reason in your opinion why the Madras courts should have 2 months' vacation ?

A. I do not see any special reason.

Dr. DeSouza.—*Q.* Is there any reason why the judiciary of Madras should get two months' vacation and the judiciary of other provinces get only one month ?

A. I do not claim any special position for Madras. I may tell you that the subordinate judiciary is very heavily worked here. I think even with two months' vacation some members of the judiciary cannot keep good health.

Mr. Justice Stuart.—*Q.* Do you not think that even in the interests of their health two months' vacation is too long ?

A. With these two months I still find many people breaking down.

Q. Do you get the same number of breaks-down here as in other provinces ?

A. I cannot compare because I do not know the conditions of other provinces.

Q. There are not only breaks-down in health, but in some cases loss of life ?

A. I know nothing of other provinces.

Mr. Rao.—*Q.* I want to ask you a few questions. You said at the outset that the selection of district munsifs of late has not been so good as before ? May I know what equipment you consider satisfactory for suitable selection ? What kind of training do you think the candidate should have previous to his appointment as district munsif ?

A. I cannot suggest anything.

Q. What kind of work has the district munsif to do ?

A. Original work.

Q. So I think you will agree with me that some kind of experience on the Original Side would be useful ?

A. Yes. I certainly agree that experience on the Original Side should be one of the qualifications.

Q. But you said that there was some deterioration of late—has it any reference to this factor or to any other factor ?

A. I cannot say that it has any reference to that factor. I think it all depends upon the care with which the selection is made. If you insist upon a certain amount of practice on the Original Side as a necessary qualification for the appointment of district munsifs, I do not think you will be able to select a sufficient number.

Q. Do you think two or three years' practice on the Appellate Side would be a good equipment for the post of district munsifs ?

A. I do not think people practising on the Appellate Side have proved a failure.

Q. I am speaking of juniors only. I am not speaking of those people who have put in longer practice ?

A. I am talking of people of five or seven years' practice. An intelligent young man with practice on the Appellate Side will not take much time to learn the work which a district munsif is required to do. I know that many people who have practised on the Appellate Side have worked quite satisfactorily.

Q. With regard to benches of two subordinate judges hearing appeals is it not a fact that in most of the districts there are two subordinate judges ?

A. Yes in many places there are two subordinate judges. I can think of Madura, Tinnevelly, Trichinopoly and Coimbatore.

Q. I thought you had some objection to a bench of two subordinate judges hearing first appeals ?

A. I did not object to it at all.

Q. You said provided we could get proper persons ?

A. I said proper persons could be had and that there was no difficulty in getting competent men in this province.

Q. I am sorry I mistook your answer.

A. That is all right.

Q. Now as regards second appeals, at present there is no second appeal on facts even where the first appellate court has reversed the judgment of the trial court. Does that contribute to any extent to an increased filing of second appeals ?

A. Yes.

Q. Is that a material factor ?

A. Yes, that is a material factor.

Q. Would your recommendations in regard to curtailment of rights of second appeals be subject to this circumstance ?

A. Certainly.

Mr. Justice Stuart.—That is already done in Burma. If the first appellate court reverses the trial court, a second appeal lies on facts.

A. In some cases I may say the feeling is that probably the appellate court is not quite capable of dealing with the matter, while in some cases it is suggested that a second appeal ought to be admitted, if possible, to establish the decision of the first court.

Q. Do you agree that in the case of concurrent judgments there will be no harm in restricting the right of second appeal ?

A. Yes, I agree.

Q. But supposing the judgment is reversed by the first appellate court would you not place some kind of restriction on the right of second appeal ?

A. I have suggested in my memorandum that where there is reversal of judgment there should be a second appeal.

Q. In one province in India there used to be the rule that no second appeal should lie from concurrent decisions, but only on reversal, but it was given up because it was found not to work well.

A. I did not know that.

Mr. C. V. ANANTAKRISHNA AYYAR, Government Pleader, Madras.

Written Statement.

1. (*a*) First appeals . . . . . 1 year.
Second appeals . . . . . 9 months.
Miscellaneous appeals . . . . . 6 ,,

On glancing through the pages of Indian Law Reports, Madras series Vol. I, I find that several contested first appeals and second appeals were disposed of by the High Court in the very year in which they were preferred. Similarly on going through the sixth volume of the Madras series, I find materials from which practically the same inference may be drawn though it would seem (to be more exact) that the appeals disposed of in 1832 were pending for a little longer period than those disposed of in 1875. The cases reported in Vol. XVI took a little more time for disposal than those in 1882.

On the whole I am of opinion that the period reasonably required for disposing of a contested first appeal in Madras is about one year—for a second appeal about nine months—and for miscellaneous appeals about six months.

2 and 3. The period actually taken now for disposal of many such cases exceeds what I consider to be the reasonable limit in such cases. The suggestions made by me below would, I think, tend to somewhat shorten the period during which civil proceedings are now pending.

4. If recruitment of the different grades of judicial officers mentioned in the question be made to a larger extent than it is now from the Bar, I think it will help in speeding up proceedings.

5. I do not think that any special training is necessary for district munsifs; but I would suggest that before taking independent charge of any station they should be given by the district judge or senior subordinate judges such instructions relating to office management and maintaining proper registers, etc., as would help them to become familiar with the same from the very beginning of their career. This need not take any appreciable time. A few days experience in these matters will stand the newly appointed judicial officers in very good stead.

6. The district munsifs are, I understand, as a general rule, not allowed to be in charge of the same court for more than three years. I would substitute five years for three years in their case. The same rule may be observed in the case of subordinate judges and district judges also.

7. I have reasons to think that setting up amount of work done by an officer as the standard of efficiency is on the whole undesirable. The quality of work turned out by them as judged by the appeal test and otherwise, regularity in attending courts and judicial habits brought to bear upon their work, and other similar considerations should also be taken into account. More frequent inspections by superior officers would also enable the authorities to form a more or less correct opinion about the efficiency of the subordinate officers.

8. No.

9 and 10. I am for raising the small cause jurisdiction of all district munsifs to Rs. 200 and of all subordinate judges and district judges to Rs. 500. In Madras, I understand, all subordinate judges have small cause jurisdiction up to Rs. 500. I am also for abolishing all Letters Patent appeals in all proceedings in suits of the

nature cognizable by courts of small causes when the amount or value of the subject matter of the suit does not exceed Rs. 1,000. In such cases, the decision by one judge of the High Court should not be open to appeal under the Letters Patent of the High Court.

12 and 13. I am for transferring from the district judge to the subordinate judge the following kinds of miscellaneous work :—(1) Land acquisition references, (2) succession certificate proceedings, (3) applications under the Guardian and Wards Act (Probate proceedings) and (4) appeals from these proceedings should lie directly to the High Court as they would be if the district judge himself disposed of the same. To this extent, I would invest all subordinate judges with additional powers. I am not for investing district munsifs with jurisdiction in any of the four matters above mentioned at present. I am anxious to preserve intact the right of first appeal to the High Court as the same exists now.

15. I am not for allowing any mortgage suits or suits relating to partnership to be dealt with by small cause courts. Mortgage suits are generally of a complicated nature, and though suits relating to partnership are generally less complicated than mortgage suits, yet, I am of opinion, that both these classes of suits are complicated enough. I am not therefore for allowing them to be disposed of by courts of small causes. I am also for conferring jurisdiction on district munsifs to try all suits under the Estates Land Act. Such suits are now tried by revenue courts (Deputy Collectors) and I think that it is time that district munsifs are given jurisdiction to try such suits.

17. I am not for investing sub-registrars with jurisdiction to try any classes of cases now disposed of only by civil courts. Though I have reason to think that as a class sub-registrars in the Madras Presidency have proved themselves to be responsible and conscientious officers of the Government, they are wanting in judicial training and have generally no judicial out-look. The limited work of a *quasi judicial* nature in connection with registration of documents which they do at present does not I think equip them with enough judicial training to give confidence to the public, if any classes of civil suits are transferred to them for trial and disposal.

18 and 19. *Vide* my answer to questions 9 and 10. I would also abolish the distinction between preliminary and final decrees mentioned in the present Civil Procedure Code and give a right of appeal only from the final decree. As mentioned above, I would abolish the right of Letters Patent appeal from suits of a small cause nature where the valuation of the original suit does not exceed Rs. 1,000. Even at present there is no Letters Patent appeal from orders passed revision, in Madras.

20. I do not think that very many frivolous second appeals are filed in the High Court. Landed property and other interests in land are so much valued by people that I am for preserving the existing right of second appeals in suits relating to immovable property, whatever be the valuation. I should like to mention that valuation in suits relating to immovable property is generally at so many times the yearly revenue payable or the yearly income from the same ; and such notional valuation does not ordinarily bear any real proportion to the actual market value of the property.

21. I do not agree to the suggestion that an appellant should be compelled to deposit in full the decretal amount before the second appeal is allowed to be filed. I would however suggest that where immovable property is not furnished as security no stay of execution of the decree should be ordered unless the decretal amount is deposited as a condition precedent to the order.

23. I am not for curtailing the right of application in revision to the High Court. It has got a very salutary effect in regularising the proceedings of the lower courts and it is a very valued power which the High Court should possess. In cases of revision under the Provincial Small Cause Courts Act, applications for stay of execution of decrees of lower courts should not be ordered unless the decree amount is deposited in court. In such cases the successful party may always be given the

option to draw the amount, on furnishing proper security. But I am not for directing the decree amount to be deposited in court before a revision petition can be presented. Nor am I for enacting that no revision petition under section 115 should lie against such interlocutory orders as could be attacked in an appeal against the decree in the suit. As a matter of practice, the High Court does not ordinarily interfere in revision against such interlocutory orders. But when it does interfere, it does so only to prevent unnecessary waste of judicial time and to save obvious inconvenience and loss to the parties. On the contrary, I would suggest that in cases where the appeal against the decree in the suit would be heard by two judges of the High Court, the revision petition also (against such interlocutory orders) should be heard by two judges. Otherwise the whole proceedings run the risk of being upset by the two judges hearing the final appeal against the decree passed in the suit. In practice there would not be many such revision petitions and the extra time taken by 2 judges in such matters will not be much.

24. In the trial of original suits I would suggest the following course :—

In the first week of every month the presiding officers should in consultation with the pleaders appearing in the cases ascertain which suits are ripe for hearing and the time each suit is likely to take (approximately) and then to frame a list of such cases to be heard—say three weeks thence. A list of such cases should be affixed to the notice board of the court. Thus the parties get intimation in time that such and such suits would be taken up for hearing on such and such dates, or at near the said dates as possible. They could have their witnesses, etc., ready, and if the court sticks to its programme and regularly proceeds to try the said suits in this order, day after day till the trial is over, very great delay and inconvenience could be avoided. By experience gained in a short time the court would be able to correctly gauge the number of days the trial of each case is likely to take up and impress on the parties in a practical way the necessity on their part to be ready. I am of opinion that the procedure adopted by some courts of taking up several original suits the same day, examining a witness or two in each and then of adjourning each one of the suits for further oral evidence to a distant date tends greatly to delay the disposal of suits ; such practice gives a premium, so to speak, to the parties never being ready with their witnesses and accounts for the inordinate length to which the deposition of several witnesses run in such cases— not to speak of new explanations being brought forward by witnesses to explain prior statements and also of fresh witnesses being cited the longer the trial of the suit is pending. Examination of witnesses day after day and finishing the trial of a suit when once begun will greatly assist the early disposal of suits. In fact if trial courts make proper use of the provisions of Orders 10, 11 and 12, Civil Procedure Code and take care to understand the pleadings and themselves draft (or dictate) the issues framed for trial, much delay could be avoided in the disposal of suits. The practice obtaining in some courts of accepting on block the issues framed by the pleaders of the parties and not even opening the pleadings (plaint and written statements) in the case is objectionable.

Whenever possible and in stations where there are additional subordinate judges, trial of small cause suits should, I think, with advantage be entrusted to a particular sub-judge so that the other sub-judge would be interrupted as little as possible in the trial of original suits by him day after day. Whenever it is found not feasible to do so, I would suggest that small cause suits should be posted for trial in particular weeks in the month—say the first week or the last week (just as sessions cases are posted in the district and sessions courts). This would permit the subordinate judge disposing of small cause suits regularly at the same time not interfering with the proper disposal of original suits. As things now stand original suits have to be adjourned in the middle of the examination of a witness because the next day or two happen to be small cause days.

25 and 28. Service of process on the defendants and witnesses is a matter concerning which very great improvement could be effected. I am not for the application of the procedure prescribed under section 106 of the Transfer of Property Act to civil suits, having regard to the conditions prevailing in this presidency. Adop-

tion of the procedure prescribed by section 106 of the Transfer of Property Act is, it seems to me, sure to bring with it serious complications. The first step so far as the defendant is concerned is to serve him with a copy of the plaint and if a notice signed by or on behalf of the plaintiff and tendered to the defendant or to a member of his family or servant is considered sufficient service, the court will find a lot of difficulty in ascertaining the exact facts and in deciding whether there was proper service. We must not forget that a very large majority of our population is still illiterate and the courts are not likely to place implicit reliance on affidavits of service sworn to by private agents of the parties. I am not therefore for the substitution—at present—of the procedure prescribed by section 106 of the Transfer of Property Act, except in the town of Madras where probably the matter stands on a different footing. I am for effecting service of notices and processes issued by courts by means of their own officers whenever possible. There is the obvious advantage of these process-servers being in every way subordinate to the presiding officer of the court who has got full jurisdiction over him and who could deal with him in case of misdemeanour in the best way he deserves. Village officers are not under the control of the court in the way the process-server of the court is. The inevitable party faction exists in very many villages; the village official invariably belongs to one of the two factions. I therefore suggest that the service of notices by the process peons of the court should be continued. Their pay, prospects should be somewhat improved and greater care taken in their selection. Again, when it is known to the plaintiff (either personally or from records) that the defendant has two residences and that he is likely to be residing at one of such places, (for example, where he has got two places of business in two distant places or a house in one village and a place of business in another) in such cases the plaintiff should even in the first instance be compelled to take out summons to both the said addresses. No doubt it may in some cases turn out to be an unnecessary precaution and a waste of a few annas, but the rule is likely to work satisfactorily in the long run. Similarly in the case of summons to the witnesses where the above state of circumstances exists, it should be made obligatory on the party to take out summons in duplicate to both the addresses. The small extra expense incurred in following the above suggestion may be made costs in the cause. If the first notice to a party is returned unserved, then, unless the court directs otherwise, I would suggest that service should be effected by means of the post office, the notice being sent per registered post pre-paid for acknowledgment. In cases of appeals and revision petitions against interlocutory orders in pending suits, I am for serving notices on the pleaders of the trial court who represent the parties in the pending suit there. If any party did not appear in the original court he should not ordinarily be entitled to notice of appeals or revision petitions from interlocutory orders in pending suits.

31. Please see my answer to question 24.

The presiding officer should be directed to frame the issues himself and write them in his own hand or dictate the same to the shorthand writer, in which latter case he should specially certify that the issues were taken down to his dictation. The practice seems to be prevalent in some courts of the pleaders of the parties framing issues and handing over the issue paper to the judge who without bestowing any attention on the matter or caring to know about the pleadings in the case bodily accepts the same. The result is obvious that the presiding officer has lost the opportunity of acquainting himself with the pleadings in the case and to form independent opinion of his own as to the exact points on which the parties are at conflict. He could have easily ascertained what the material documents bearing on the case are and on what points only oral evidence is needed. Parties could be easily made to admit facts or documents, and the scope of the trial could be limited to the narrowest compass. A few minutes spent at the first hearing in the circumstances would save a lot of time of the court and remove from the parties the temptation to drag on the case unnecessarily. Courts of appeal and superior officers on inspection duty should be impressed with the importance of seeing that the trial courts do act up to the spirit of the procedure prescribed by law.

34. *Vide* answer to questions 24 and 25.

36. I am not in favour of substituting affidavits for oral evidence in the cases mentioned. It is very desirable in cases where the law provides no appeal that the judge should have opportunities to see the witnesses who give evidence. It is all the more necessary in cases such as enquiries into claims and proceedings for removing obstruction to delivery of property in execution that the court should see the witnesses and the witnesses are subjected to cross-examination. Unless such matters are properly disposed of, the orders would be contested by a regular suit which the law allows. Examination by the court of the persons concerned in the first instance would be of very great use for obviating the necessity of filing original suits in many such cases and in all cases would substantially help the court in arriving at a correct conclusion ultimately.

37. I am not for fixing any time limit as suggested. The matter will depend upon the circumstances of each particular case and the fixing of time limit would probably result in failure of justice in many cases.

39. The principle of representation in such cases is even now well understood, but to avoid future risks all members of a Mitakshara family and of a Malabar Tarwad are in most cases at present made parties to suits and proceedings. This procedure is cumbersome and involves great delay and expense. It is not unusual to find more than 100 respondents in some of the appeals coming from Malabar. It takes a lot of time to serve all these, and in practice only the karnavan or senior members take active part in the case. I would suggest that in such cases besides the *karta* or the managing member of the Mitakshara family, the senior co-parcener who would be the next *karta* or manager should also be made a party to the suit. I am also for making the eldest son of a debtor a party to such suit where the debt sued for could be impugned as having been incurred for illegal or immoral purposes. In the case of the Malabar Tarwad also, I would make the senior anaathravan and the senior female of the Tarwad as parties in addition to the karnavan. In the case of both the Mitakshara family and the Malabar Tarwad I would also suggest the additional precaution of a copy of the notice or other process being affixed to the usual family or Tarwad house.

41. Delay is caused by the difficulty of appointing a proper guardian *ad litem*. I think there is much to recommend the suggestion made in the latter part of the question that the plaintiff should be made to name a plurality of names of possible guardians, but I would limit the issue of notice to three or four persons at a time.

43. Occasionally it is true that one does come across judgments which are unduly long, but such instances are rare. Many judgments on the other hand are unduly short and consequently the appellate authority has to reverse the same and remand the case for fresh disposal. I am therefore, of opinion that it is not expedient to lay down any rules as regards the length of judgments. Of course it is open to appellate courts to correct the tendency, if any, of any particular judicial officer to be too verbose and to write unduly long judgments out of proportion to the importance and necessity of the case.

46. *Vide* my answer to questions 24 and 25.

47. Ordinarily I would insist that the application for the examination of witnesses on commission should be made before the date first fixed for the recording of oral evidence by the court. The practice of issuing commission for the examination of witnesses to persons other than practising pleaders should be put an end to. I am not for adding to the existing powers of commissioners.

48. I do not think that the proposed safeguards of insisting upon an affidavit or increasing the day costs are likely to be really effective in speeding up work—very often parties agree to mutual applications for adjournments, the understanding being that the one side would not object to any future applications for adjournment made by the other side. The responsible duty of granting adjournments should rest with the court and the presiding officer should be made to feel that the responsibility rests solely on him, and he is responsible for the proper exercise thereof.

49. *Vide* answer to questions 24 and 25. Appellate courts and officers on inspection duty should be impressed with the necessity of bringing to the notice of any subordinate officer who is found lax in following the rule.

51. Yes. In the 'list of ready cases' to be prepared by the court as suggested in my answer to questions 24 and 25, I will give priority to commercial suits.

53. I see no objection in the extension of the principle of section 21, Civil Procedure Code, to proceedings in execution.

54. I am also in favour of investing courts to which a decree is transferred for execution with the powers mentioned in the question. But I would add the qualification that the court to which the decree is so transferred for execution is *not* a *court of inferior grade*. It is possible that a decree of a subordinate court may be transferred to a district munsif's court for execution and in such cases I am not for investing such inferior court with these powers.

The Madras view is that the provisions laying down limits of pecuniary jurisdiction of courts apply only to trial of suits, and not for execution of decrees; and consequently in Madras, district munsifs could execute decrees passed by subcourts for (say) Rs. 7,000 though district munsifs could not try original suits, the valuation of which exceeds Rs. 3,000—see I. L. R. VII Madras. 397—I. L. R. XVII Madras 309.

55. I see no objection to the course suggested in question 55.

56. I am not for changing the various periods of limitation mentioned in the question, nor am I for altering the starting point from the date of the last application to the date of the last order on the last application. The question as to what is the *last order* is sure to raise a lot of controversy. I am not in favour of the suggestion that it shall not be necessary for a decree holder to apply every three years, but I am in favour of removing the necessity which at present exists of his having to apply once a year on penalty of having to issue notice otherwise.

58. I anticipate that difficulties will crop up even with the safeguards proposed in question 58. Payment into court should be encouraged as the same puts an end to all further disputes and only such payments outside court should be recognised as are evidenced by the signature of the vakil of the decree holder or by a registered receipt granted by the decree holder. I would not be satisfied with evidence of the signature of the decree holder as the bulk of the population of the presidency is illiterate and a fairly large number know only to write their names. A uniform low fee of say 8 annas or one rupee could be declared to be leviable by the sub-registrar to register receipts evidencing payment of decree debts and he should be directed after registration to send the receipt direct to court so that the necessary remarks might be made in the court's register about the fact of satisfaction of decrees. I may mention here that registration officers have even now orders that when deeds of transfer relating to immovable property are registered by them, they should take the written consent of parties with reference to transfer of *patta* to the name of the purchaser and transmit the same to the tahsildar—a course found to be necessary to keep the village accounts up to date and in the names of real owners—and to have *pattas* in the name of proper persons. Similarly, the suggestion that the receipts evidencing the discharge of decree debts by payments out of court should be registered by the sub registrar (in cases where the decree holder's vakil does not sign the receipt) and that the registrar should forward the receipts to court is not an entirely novel or a revolutionary one.

59. I see no objection to allowing the transfer of a decree to have execution as suggested. But I am not for deleting the second proviso to rule 16 of order 21.

60. I am for reserving to the court the discretion to refuse execution at the same time against the person and property of judgment debtor. Particular cases may arise which may call for the exercise of such discretion on the part of the court. I am not for the deletion of Order 21, rule 21.

61. I am for deleting clause (*a*) of Order 21, rule 22 as to issue of notice when more than one year has elapsed from the date of decree. But I think that before

execution is ordered, the legal representative should have notice of the existence of the decree and of the application to execute it. It is possible that legal representatives may not in some cases have any knowledge of the existence of the decree at all. It seems to be therefore proper that, before execution is ordered, the legal representative should have notice.

62. I think that a sweeping provision that there shall be no interim stay in the case of money decrees may sometimes work hardship. The executing court should be given discretion on proper security being furnished to allow the judgment debtor time to apply to the appellate court for an order staying execution. The appellate court should ordinarily direct the judgment debtor in case of money decrees to deposit the decree amount within a particular time and should accept security of immovable property, only in exceptional cases. I should like to mention here that in cases of appeals from money decrees, the appellate court is really flooded with applications for orders that the decree holder should be allowed to draw out moneys if deposited by the debtor in such cases only on furnishing necessary security. Courts which pass money decrees may as well be given power to pass such orders in cases of money decrees when the amount is deposited by judgment debtor. It was observed by Sir James Colville in delivering the judgment of the privy council in the case reported in 14 Moores Indian appeals 605 at page 612—"The difficulties of a litigant in India begin when he has obtained a decree." Consequently all attempts to simplify proceedings in execution and expedite the reaping of the fruits of the decree would be welcome. Of course the court should see that the judgment debtor is not really unnecessarily prejudiced, and that his interests are not sacrificed, where the same could be protected. I do not see any necessity for special notices in different stages of execution proceedings in the case of money decrees, sought to be executed by the sale of immovable properties. I think it will be quite enough if the judgment debtors are given notice at the beginning of execution proceedings and I am for giving that notice to the judgment debtor personally and not through his pleader in suit. A pleader who appeared for the judgment debtor in the suit may no doubt have authority to represent him in execution, if he chose to do so. But in practice, unless subsequently instructed by the judgment debtor after decree, such pleader takes no real interest in the matter and any notice of the execution proceedings served upon such pleaders should not be considered to be proper service on the judgment debtor. Of course if the pleader is instructed after the decree in connection with the execution matter, he must be taken to represent the judgment debtor in all subsequent stages of the execution proceedings. Any order passed in the usual course should then be held binding on the judgment debtor. Even if the judgment debtor did not appear in the suit at all, I think notice of the execution petition should be served on him. The said notice should inform him that all further steps necessary to complete execution would be taken without any further notice to him and that he takes the risk in not appearing in proper time to take care of his interests.

64. No doubt proclamation of sale is an important step in connection with the sale of immovable property, but for reasons mentioned in my answer to question No. 61, I think that notice to the judgment debtor at the beginning of execution proceedings is enough. If after that he does not care to trouble himself about the matter, I do not know whether sending him a copy of the proclamation of sale is likely to stir him up. If he is anxious, he could gather the contents of the proclamation from the copy affixed to the immovable property sought to be sold or to the court house. I see no reason why writs of attachment and sale proclamation should not issue simultaneously. As mentioned already, I am not in favour of the rule that notice of the execution petition should be served on the pleader, who appeared for him in the suit—much less could refusal by such a pleader to receive such notices be held as tantamount to refusal by the party.

65. As mentioned in my answer to questions 24 and 25, I do not approve of the system of execution of arrest warrants by village officials. I would entrust execution of arrest warrants only to the subordinate officers of the court over whom it has plenary jurisdiction.

66. In simple mortgage suits I am not in favour of passing two decrees—preliminary and final—nor am I for a separate personal decree to be passed after the security is exhausted. All these matters should be disposed of (as was the practice before the present Civil Procedure Code) by one decree, by whatever name called.

67. Cases frequently arise where the judgment debtor moves the appellate court after great delay and the appellate court sometimes passes *ex parte* orders staying execution proceedings pending in the lower court. The result often is that all proceedings taken in execution in advertising the properties for sale, etc., are nullified at the last moment and the decree holder has to begin again. But when final orders are passed the courts have regard to these things and seldom allow stay of execution of the lower court's decree unless such applications are made very promptly. I think it will be better to invest the appellate courts with jurisdiction to award compensation in proper cases, when they are satisfied that the justice of the case requires the same. Ordinarily the nature of the compensation would be the amount spent for proceedings in connection with execution which have been thrown away as the result of the *ex parte* order obtained by the judgment debtor, and the courts should be given power to direct the said amount to be deposited in court within a time to be fixed, else the appeal should be dismissed (as in cases where security for costs ordered is not furnished).

68. Yes.

72. Having regard to the fact that sale deeds and lease deeds need not necessarily bear the attestation of witnesses, I do not see any reason why *mortgage* deeds should not be treated in the same way. In case of registered documents there does not seem to be any reason, ordinarily, to call an attesting witness, to prove the document. I would make mortgage documents also stand on the same footing as other documents for the purpose of proof. But I am not in favour of making any special presumptions of validity in the case of mortgage deeds, which are not available in the case of other documents. I will leave the provisions of the Evidence Act to have their operation in case of mortgage deeds as in the case of others. But seeing that substantial delay often occurs, and often injustice also by reason of the provision that one attesting witness at least of the mortgage deed, if available, should be examined, and seeing no proportionate benefit (or in fact any benefit) is derived by enforcing the existing rule, I am for abrogating that provision of law. At this juncture, I wish to point out another fruitful evil which creates and surely prolongs litigation and, I think, without proportionately advancing justice; I mean the plea often raised as defence to the mortgage suits—that a portion of the mortgaged properties was really non-existent property, or was included in the deed for the purpose of getting the document registered before a particular registration officer. Lot of time is often taken to find out the real existence or otherwise of such an item of property, what the intention of the parties was in including the same in the mortgage deed, and what rights the mortgagor had or purported to have over the same. Seeing that the document has been already registered and seeing that due instruction of the execution of the mortgage charging properties situated within the jurisdiction of other registrars has to be given by the officer so registering, and having regard to the fact that the registrars within whose jurisdiction any portion of the mortgaged property is situate have to note the same in their books with the result that for practical purposes it is the same as if it was registered by the latter registration officers, I fail to see the justice of allowing such pleas and the justice of wasting a lot of court's time in inquiring into the same. As the matter is connected with avoiding delay in the disposal of mortgage suits, I wish to suggest that the registration act may be amended to make it clear that the registration in such cases would be perfectly-valid as regards properties found to belong to the mortgagor, so that such pleas would not be accepted as avoiding the mortgage deed altogether.

73. I am not in favour of allowing papers printed in the High Court in a previous litigation as secondary evidence. One cannot shut his eyes to the fact that there are very often serious mistakes in the said printed papers, and to make them secon-

dary evidence at a time when such mistakes could not be easily noticed or checked is likely to work injustice. Very many documents (not quite relevant) are often filed and exhibited in suits. Such exhibits are often printed in the High Court as part of the printed records of the appeal, and not being really relevant to the matter in dispute in appeal, very often no body notices the mistakes, if any, committed in the translation and printing of the same. To allow these printed papers in such circumstances to be used as secondary evidence in a future litigation would often be found to create difficulties and injustice.

83. *Vide* my answer to question No. 72.

General.—Much delay is generally caused in obtaining certified copies of depositions of witnesses and of exhibits, etc., filed in cases. Superintendents of copyists should be directed to submit written explanation for delay in all cases where copies are not supplied within 10 days of the deposit of cost or copy stamp papers by the applicant. Similarly, it is not unusual to find appeals, etc., adjourned for the reason that records are not received. I would suggest that record keepers should be directed to submit written explanations for delay in sending records in all cases where the records were not sent within 10 days of the receipt of the requisition for records. Trial courts should ordinarily take written undertakings from witnesses present in court, that they would without further summons, attend court on any specified date to which the suit is adjourned. Applications should not (except in very special circumstances) be filed in any cause without serving notice and copy of affidavit on the pleader of the opposite party, in cases where the opposite side has entered appearance by pleader. If this rule is strictly followed, applications for adjournment by respondents or counter-petitioner could be avoided, the reason for applying for adjournments being mainly that copy of the affidavit, etc., filed by the petitioner has not been obtained.

I would also suggest that third party procedure mentioned in the rules of the Supreme Court Order 16, rules 48 to 55 may with some modifications be incorporated in our Civil Procedure Code. The object of the rules is to prevent multiplicity of actions and they are intended to apply to all cases of contribution and indemnity where all questions between the parties can be finally decided in the action. Under this procedure whenever a defendant in a suit claims to be entitled to contribution or indemnity against any person not a party to the suit such defendant may by leave of court have such third person made a party to the suit. In such cases and in cases where a defendant claims such relief against another defendant the court could finally dispose of the rights of all the parties and pass such decree and against persons as it thinks fit.

I would also suggest that the scope of section 42 of the Specific Relief Act may be widened by conferring on the courts jurisdiction to construe documents and to declare the rights of parties based on the same in proper cases. The construction put by the court should be held binding on parties and their legal representatives, and in such suits it should not be necessary that parties should ask for any other or further relief. Of course in cases where theoretical questions are raised in which none of the parties to the suit are interested, courts should be given a discretion not to adjudicate on such theoretical questions. The suggestion here made corresponds to the procedure by way of originating summons in England.

C. V. ANANTAKRISHNA AYYAR, Government Pleader, called and examined on Tuesday, the 29th July 1924.

Mr. Justice Stuart.—*Q.* What is your experience about the class of men you are getting into the provincial service at present? Are you satisfied?

A. On the whole I am quite satisfied, but I think there is some scope for improvement.

Q. You think that they ought to have more experience before they take charge ?

A. No, selection from the Bar as at present done is quite sufficient but a little more discretion in the matter will be in the interests of the public.

Q. You think that the best selection is not made from the candidates available and that the best men are not selected ?

A. Yes.

Q. Are you in favour of competitive examinations ?

A. I don't think any further examination is necessary.

Q. Do you think that an interview is rather a good thing, *i.e.*, a man ought to be interviewed and seen by the selection committee ?

A. I think so.

Q. There is a tendency—is there not—that the men at headquarters have a better chance than the men who are in the out-lying districts ?

A. Yes, there is a talk like that, but I think district judges are also consulted.

Q. But a man who is known to the officers of the selection committee must have the advantage of being known to them ?

A. Yes, that is so.

Q. Would you like to put these young officers, before they are put actually to try the cases, under a superior officer to learn office work ?

A. No.

Q. Don't you think that they should be put under a superior officer—a retired provincial service man who has risen to be a district judge—who could teach them practical points ?

A. My idea is that they require no special teaching but they ought to have some knowledge of the office work.

Q. The trouble is that if you send these young officers to a district judge and if the district judge is very busy with his work he will probably give them only five minutes, but if these young officers are sent to a special officer he might be able to give them six hours a day ?

A. But my idea is that the district judge is not required to teach them. If they are sent to mofussil courts they will learn the office procedure.

Q. We have tried both the ways in my province in regard to executive officers and we find that the special officer course is the best. At first a magistrate was put under the collector and the collector was supposed to teach him his work, but now we have given up that idea and we are putting these young officers under a special officer to teach them. We find now better results.

You are I see very much in favour of inspections by superior officers ?

A. Yes.

Q. At the present moment you think there is a good deal of improvement necessary under this head ?

A. Yes.

Q. From your experience—I think you have practised both in Madras and outside—can you say that the district judges are not doing these inspections satisfactorily ?

A. My idea is that the district judges do not discharge this portion of their duty satisfactorily.

Q. Do you think that they have no time ?

A That is another matter.

Q. Do you want intelligent and sympathetic inspection, *i.e.*, an inspection not merely for finding faults, but a helpful inspection ?

A. Yes.

Q. So that the district munsifs can come to the district judges with their difficulties ?

A. Yes.

Q. That is, you do not wish him merely to enquire if the munsifs have followed such and such a rule ?

A. Yes, but some times a clerk is sent in advance.

Q. I see you are in favour of raising the small cause court jurisdiction of district munsifs to Rs. 200 and that of the subordinate judges to Rs. 500 and also you want to abolish Letters Patent Appeals in suits of small causes up to Rs. 1,000 ?

A. Yes.

Q. But does that exclude special leave ? I mean to say a man has got to come up to the High Court and say according to you " I am not satisfied with the decision in first appeal and I want to be heard again." Cannot the High Court say " You show us reasons to be heard again "?

A. Frivolous land appeals have been penalised by the High Court by fixing a minimum vakil fee to be paid to the adversary and such a fee is hardly less than thirty or thirty-five rupees. My idea is that that is a sufficient penalty for filing such appeals.

Q. Is a successful respondent invariably able to recover the penalty ?

A. In land cases he is—in 95 per cent. of cases.

Q. I do not want to discuss the matter further as I see that you do not think that it would be possible to carry that point beyond the abolition of Letters Patent Appeal.

Now there is another suggestion which we could not put to the learned Advocate-General and that is not a contentious point at all. It is merely a practical point. Do you not think that we can do a good deal to speed up the work if we separate the uncontested work from the contested work at the very beginning, as soon as it comes up before the court ?

A. I think that is the arrangement on the Original Side of the High Court.

Q. Yes, but I want it to be followed in the districts ? The idea would be to have an officer, say a registrar.

A. That, as a matter of practice, is done in the mofussil courts. They take up undefended cases and dispose of them first. They, however, do not make a nominal division but practically they do.

Q. In some provinces, I am sorry to say, I have seen an uncontested case coming up nine times before it was taken up.

A. That is not my experience.

Q. Do you think that the present arrangement works well in Madras ?

A. Practically it does, though there is no nominal distribution.

Q. Do you mean to say that a judge fixes the first date—a reasonably early date—and when the cases come up for hearing he enquires at once as to whether this suit is contested or uncontested, and if it is uncontested he usually decides on the first date.

A. Ordinarily it is done.

Q. One thing follows another. Does a judge in the district fix more work than he can possibly do ?

A. He does.

Q. Then how do they dispose of the uncontested work ?

A. Early in the morning as soon as the judge comes to the court he enquires what cases are ready, and when he finds that particular cases are read and they are *ex parte* matters, he gets a clutch at them and finishes them.

Q. And they do really get to the bottom of the list ?

A. Whether they do it by regularly going through the list or not, they are able to see that the uncontested cases are disposed of.

Q. I found an instance where a munsif or rather his clerk fixed 120 cases for one day.

A. That is not my experience.

(*Dr. DeSouza*—I find that the duration of uncontested cases is very short in this province. In the mofussil, in munsifs' courts, it is 51 days.)

Q. Do you think that cases are heard *de die in diem* ?

A. It is generally done, but my idea is that there is much scope for improvement.

Q. How would you improve ?

A. I would first insist upon all cases to be heard *de die in diem*, and then upon the necessity of supervision to see that instructions on this behalf are particularly carried out.

Q. Do you find that in Madras the tendency on the part of certain unscrupulous people is to hold up their cases deliberately in order to fabricate the defence ?

A. It cannot be said that there are not such sort of evils here, but there is nothing particular here.

Q. Of course, there is a simple tendency of the man who is dilatory to postpone a thing weeks later what he can do days sooner, but in some places one actually gets a man who does it deliberately.

A. That is not my experience.

Q. You are in favour, I think, of division of labour. You think that it is rather a mistake to have three subordinate judges in one station, all exercising small cause court power, and it is much better to give it to one subordinate judge. You agree that it is a great mistake to supply streaks of work ; divide it this way or that way ?

A. That is the suggestion I have made.

Q. Have your subordinate judges been given shorthand writers ?

A. I think every one of the subordinate judges and a large majority of munsifs have been given shorthand writers. It is one of recent introductions. During the last five or six years there has been much improvement.

Chairman—Q. I take it that shorthand writers, with good knowledge of English, must be more easy to obtain in Madras ?

A. I am told that Madras supplies shorthand writers for the whole of India. A shorthand writer in the district court is one of the clerks and he is paid Rs. 15 as allowance on passing an examination.

Mr. C. V. Viswanath Sastri—Q. Do you not think that it is better to examine the defendant and the plaintiff immediately the case is taken up and then to go on with the witnesses ?

A It depends upon the nature of the case but ordinarily that will be a very good suggestion.

Mr. Justice Stuart.—Q. In your opinion it is the business of the presiding officer to frame his own issues and not to let other people do it for him.

A. Yes.

Q. What you want is that the judge should apply his mind intelligently according to the nature of each case.

A. Yes. There are some cases in which it is hardly necessary to examine the parties at all. There are other cases in which it is necessary to examine them. We don't want so much rules and regulations. We want brains. The man who applies his brains knows how to do the thing in the best possible way.

Q. I think we must all agree that, where the presiding officer goes on to hear the evidence without knowing what the case is about, he cannot be defended in

any way. However much he gets information from other people he must know himself what the case is about.

A. Yes.

Sir T. Desikachari.—*Q.* Will there not be some inconvenience in having the defendant examined before the plaintiff closes his case ?

A. In some cases it might be. But after the plaintiff's examination is over the defendant may not find himself prejudiced.

Q. In order to have explanations of points brought out in the examination of the plaintiff could you cross-examine him at the same length as if he were going on with his case ?

A. That is true. But after the plaintiff's examination is over, the defendant cannot complain if he is asked to be examined.

Q. Even before all the witnesses of the plaintiff are examined ?

A. It is largely a matter depending on the circumstances of each case. I think it should be in the discretion of the judge. Ordinarily after the plaintiff's examination is over, I don't think the defendant is likely to be prejudiced if he is asked to get into the box.

Q. I am putting you this question because it was put forward by some member of the bar that it would be very inconvenient to have the defendant examined before the plaintiff closes his case.

A. It might be so in certain cases. But, in matters depending upon the personal knowledge of the parties I would think on the whole it may be a proper proceeding.

Q. You have to recall him afterwards. You could not finish him.

A. If you cannot call him afterwards I am not for examining him at all.

Mr. V. Radhakrishnaiya.—*Q.* Are there not several cases in which the onus is entirely on the plaintiff to prove his case ? Unless the plaintiff, in his evidence, has established some case, it may not be convenient for the defendant to give evidence.

A. Ordinarily it will be so. But there are certain matters which the defendant could depose to as resting upon his personal knowledge.

Q. Why should not he wait until the plaintiff has proved his case? Supposing you are compelling the defendant to get into the box and you want to examine him, unless you know the whole evidence of the plaintiff and his witnesses. how can you examine him ?

A. I only want that power should be reserved to the court in proper cases to have the defendant also examined.

Q. That will be only a sort of slipshod examination.

A. I am only for that slipshod sort of examination, because something that comes from the defendant would probably throw more light on the case.

Q. Cannot that be achieved by administering interrogatories at an early stage ?

A. I think there ought to be some discretionary power vested in the judge as to whether the defendant should be examined before the plaintiff closes his case.

Mr. Justice Stuart.—It is not really for the purpose of proof but for eliciting what the defendant's case is.

Q. There may be cases in which the lawyer appearing for the defendant may think it necessary in the interests of his client not to put him into the witness box. You know that some parties, who produce good evidence, when they get into the witness box, break down in cross-examination. The lawyer thinks that he can win his case without putting him into the witness-box. If he thinks he can take the risk why should you not allow him to do it ?

A. The court will generally be guided by what the defendant's vakil also says in such matters and in cases where the defendant's vakil shows disinclination, the court may think it proper to put him in the box and examine him.

Sir T. Deşikachari.—Q. In other words you want that the present rule saying that the defendant should begin his case after the plaintiff closes his case might be so altered as to vest in the court a power to examine the defendant if the court likes.

A. Yes.

Mr. Sastri.—Even now at the settlement of issues it is open to the court to examine the plaintiff and the defendant.

A. Yes.

Mr. Justice Stuart.—Q. Now, with regard to service of processes, I think that in Madras you have a system of registered address.

A. Yes. It is given in the plaint itself.

Q. Is that carried on through execution ?

A. No.

Q. Don't you think it would be an improvement to extend that ?

A. Yes.

Dr. DeSouza.—Q. Is the same lawyer retained for execution ?

A. No. I am for the judgment-debtor furnishing an address for service if it is not already on record.

Q. Generally the address for service is that of the pleader.

A. Yes.

Q. Would you be in favour of continuing the same address ?

A. No, because if the defendant fails in the suit there is very little work remaining between him and the pleader and probably some injustice may be done if the same address is continued. The pleader may not have any funds of his former client to communicate to him and do the necessary things.

Mr. Justice Stuart.—Q. My point is this. For the purposes of the suit the defendant gives the address of his pleader. If he does not wish that it should be extended to the matter of execution and appeal, then it is his business to say: 'Don't serve the notice on my pleader. Serve it on me.' That is all I mean by registered address.

A. Yes.

Q. Do you not think that it will be an improvement if the parties keep themselves in touch with the court by supplying it with their address. Cannot the court say " you have given us your address—well the case is not yet over, there may be an appeal or there may be execution and you must keep in touch with us and let us know your address whenever you change it and it will only cost you two pice for a post card "?

A. That is a very good suggestion.

Q. The greatest trouble after the case is over is in finding out the man's address for the purposes of execution ?

A Yes.

Mr. Sastri.—Q. In suits in which decrees are passed after contest and personal service, why should the defendant be given any further notice? When a decree has been passed after personal service why should the defendant be given any latitude? He knows that a decree has been passed against him ; why should a notice be sent to him again ?

A. There are so many processes open to the decree holder to take that it is necessary to send a notice to the defendant, *i.e.*, to take attachment before arrest, appointment of a receiver and so on. In all these things a notice has to be issued to the defendant.

Q. But why should the defendant be given a notice to run away ?

A. My view is that if the decree holder wants to proceed with execution, the fact must be brought to the notice of the defendant.

Q. When he knows that a decree has been passed against him and that he has to pay the money, why should any mercy be shown to him ?

A. I think it is better to give him a notice.

Diwan Bahadur C. R. TIRUVENKATACHARIAR, Chief Judge, Court of Small Causes, Madras.

Written Statement.

1. A. (ii) District and Sub-Courts.

Original Suits based on—

(*a*) title, one year,

(*b*) money, six months.

Regular Appeals, six months.

Civil Miscellaneous Appeals against orders, three months.

Small Causes (contested) three months.

(iii) District Munsif's Courts.

Original Suits based on—

(*a*) title, one year,

(*b*) money,
(*c*) rent,
(*d*) others,
} six months.

Small Causes (contested) three months.

B. Sixty days.

C. The jurisdiction of the presidency small cause courts is much wider both as regards the classes of suits cognizable by those courts and the pecuniary limits of their jurisdiction which extends up to Rs. 2,000 as compared with Rs. 500 which is the maximum limit of the jurisdiction of the provincial small cause courts. There are many heavy suits of over Rs. 1,000 in value involving both questions of fact and law and when they are contested the trial takes up nearly as much time as they would if they are tried as original suits, the only substantial difference in the procedure being that the evidence is not recorded by the judge *verbatim*, but he takes only notes of evidence and issues are not formally settled though all the same the questions for determination have to be fixed when the trial commences in order that the judge may have a clear grasp of the case and be in a position to rule out irrelevant evidence. The decision of the trial judge on questions of fact is final. The only right of appeal given to the aggrieved party is an application for a new trial which can be made only on the ground that the decision is erroneous in law and even on that question the decision of the full bench of the court is final, the High Court's power to interfere with the decisions of the court being restricted to cases which can be brought within the purview of section 115, Civil Procedure Code. The result is that a very large number of new trial applications are filed and the hearing of those applications by the full bench takes up a considerable part of the time of the court. Moreover, many commercial suits are filed in the presidency small cause court in which the defendants are traders in the mofussil, who have had dealings with merchants in the city and such cases are as a rule hotly contested. Further ejectment applications in which defences under the City Tenants' Protection Act No. III of 1922 are raised, have also to be taken cognizance of by the court and the judge has, in those cases where he holds that the case falls within the pur-

view of the Act, to determine the valuation either of the land or of the superstructure or of both just as in land acquisition cases. I need scarcely observe that such cases are much more complicated than most original suits and their trial takes up a good deal of time. The judges have also to cope with a heavy file—the registrar's jurisdiction being limited to suits not exceeding Rs. 20 in value—and the Chief Judge has to try also cases referred to him by the Collector under the Land Acquisition Act and also certain classes of cases under the City Municipal Act. A very large proportion of contested suits in which the parties and witnesses reside within the city are disposed of within three months; but the heavier suits in which larger interests are involved and particularly those in which the parties and witnesses have to come from the mofussil often take a much longer time for disposal. Having regard to these considerations, I would consider a period of six months not to be an unreasonable period for the disposal of contested suits in the Presidency Small Cause Court.

Suits and execution proceedings in the City Civil Court, Madras, same as in district munsif's courts.

Execution proceedings in the Presidency Small Cause Court, uncontested, two weeks; contested, two months.

2. In a fairly large number of cases, yes.

The main causes of the delay are—

1. Delay in the service of processes which is due often to wilful evasion of the parties concerned and to the process-serving establishment being unsatisfactory and unreliable.

2. Want of sufficient number of courts to cope with the volume of work.

3. The increase in the fighting tendency of the litigants in recent years due to the large numerical increase in the strength of the Bar.

4. The habit of dilatoriness and neglect of business methods of the parties which is a common feature of a large proportion of the litigants in this country. The taking out of processes is in many cases delayed until the very last moment.

5. Absence of the practitioners engaged in the cases when they are called, and sometimes their unpreparedness to go on with their cases.

6. Posting of judges to stations, the language of which they are imperfectly acquainted with.

4. *District Munsifs.*—The present method of recruitment of district munsifs in this presidency is on the whole satisfactory. The pay and prospects of the office should be such as to attract junior practitioners at the bar having decent practice.

Sub-Judges.—Sub-judges should be recruited from district munsifs, regard being had to merit.

District Judges.—Half the number of district judgeships in the presidency should be reserved for recruitment from the judicial services, including the special judicial posts in the presidency town and the bar; of that number two-thirds must be reserved for the services and the remaining one-third may be recruited from the bar.

High Court Judges.—Half the number of the High Court judgeships should be reserved for the judicial services, making no distinction between the Indian Civil Service, Provincial Judicial Service and the Special Judicial Posts in the Presidency Town, the other half to be recruited from the Bar making no distinction between barristers, advocates and vakils.

5. Not for those who have been recruited from practitioners having decent practice at the Bar.

6. Many of the districts have each its own peculiarities and it naturally takes some time for the judge to get into full touch with them. I think the period of three years for which a district munsif is usually kept on in a place may well be raised to five years. It will also conduce to the officers having a more efficient control over the establishment including the process department. Incidentally

it will also lessen the hardship now felt by the district munsifs in educating their children by transfers at short periods.

7. Efficiency cannot of course be judged by quantity alone. In some districts the suits are very intricate, in other districts comparatively simple. I may also mention that, with rare exceptions, all the officers are imbued with a high sense of duty and do not shirk their work. If, however, a standard of efficiency is to be prescribed, I would suggest that the average of say seven years in any particular district, or place may be taken as the standard as regards the amount of work for that station. No special steps, inmy opinion, are required to ensure its attainment as the efficiency bars which have been imposed at different stages of a judicial officer's career will produce the desired result. I may add that few officers would find it difficult to satisfy the quantitative test. They will seldom fall short of it except during those periods when comparatively heavy suits have to be tried.

I may add that I share the opinion generally held that the submission of quarterly returns which is now required may well be dispensed with. In the case of officers of a higher grade than district munsifs an annual return and in the case of district munsifs half-yearly returns would, I venture to think, be quite sufficient.

8. Yes, to some extent.

Both in the City Civil Court and in the Presidency Small Cause Court, Madras, applications for adjournment are not infrequently made by both parties on the ground that their pleaders are engaged in the High Court or in some other court in the city. Even in cases where the pleader for one side only is engaged elsewhere, he usually arranges with the pleader for the opposite party to have the case passed over, and he readily consents for the simple reason that he himself may be in a similar predicament when some other cases of his are reached. The parties too desire their cases to be handled by the pleaders engaged by them at the outset and hence prefer to have the cases adjourned. The refusal to adjourn such cases is calculated to create the impression that sufficient regard is not paid by the court to the proper trial of cases and that it is influenced more by the desire to show prompt disposals. The litigants in this country are generally aware of the congestion of work in courts for which the judges are not responsible and would rather prefer delay to disposals which they consider to be more or less perfunctory.

9. I think not.

10. Not in original suits. As regards small cause jurisdiction, I would confer it only on district munsifs who have passed the probationary period. There need then be, in my opinion, no differentiation as regards the pecuniary limits of jurisdiction between junior munsifs and senior munsifs and all of them may be invested with jurisdiction to try small cause suits up to Rs. 200 in value.

11. No.

12 and 13. I think the district judge may well be relieved of the miscellaneous judicial work of the kind referred to in question 13 where his other work, civil and criminal, is heavy. I would transfer such work only to sub-judges for the present; but I should also point out that many sub-courts are already overburdened with work and speedy disposal cannot therefore be expected if the work of such courts is materially added to as suggested. Transferring probate proceedings and land acquisition proceedings to district munsifs will not, I think, be acceptable to the public.

As regards the administrative work, I think it should be done only by the district judges and I am not in favour of its being transferred to any other officer in the district.

15. In the case of the presidency small cause courts, no; the present jurisdiction is sufficiently large as regards the nature of the suits cognizable by those courts. As regards provincial small cause courts I would omit Articles 8 and 36 from the second schedule of the Provincial Small Cause Courts Act. The suits (mortgage and partnership) referred to in the latter part of the question often involve much complexity and are not, in my opinion, suitable for trial as small cause suits.

16. (*a*) No.

17. No.

18. Orders of attachment before judgment and interim orders passed under Orders 38 and 39, Civil Procedure Code, need not be made appealable. The right of appealing to district courts from judgments of subordinate judges in suits the valuation of which is below Rs. 5,000 may well be done away with and a direct appeal allowed only to the High Court in all such cases. Such an amendment of the existing law is in my opinion eminently desirable and will have the effect of doing away with two appeals in those cases.

20 and 21. I think a good many frivolous second appeals are now preferred. Where the decrees of both the lower courts are concurrent it may be made a condition precedent for the filing of the second appeal that either the decretal amount should be deposited or security furnished therefor, unless the lower appellate court certifies that it is a fit case for second appeal. I think the suggestion, which has been made in some quarters, that the attaching of a certificate from a legal practitioner that there are good grounds for preferring a second appeal in the case may be insisted on, is one worth consideration.

23. Both the suggestions seem to me to be desirable. As regards the first suggestion I would allow to the court discretion to accept security for the decretal amount in suitable cases instead of insisting on the same being deposited.

25. The difficulty in effecting service is due partly to the addresses of the defendants given in the plaint being sometimes imperfect as well as incorrect. It is desirable that one attempt at least should be made to serve the defendant personally, if possible. Where such an attempt fails, service may thereafter be made by sending the summons through registered post addressed to the place where the defendant permanently resides and such service ought to be considered sufficient. Where the suit arises out of any business carried on by the defendant, the summons should be sent by registered post addressed to the place of business.

26. So far as the form of the plaints are concerned those given in the Civil Procedure Code are adhered to.

27. Not much—but in a fair number of cases the pleadings are prolix and loosely drawn up.

28. Part 1. Yes. In the presidency small cause court, Madras, this method of service through the post office has been frequently adopted with advantage. Please see also the answer to question 25.

Part 2. The village officials should not be entrusted with the service of processes, but should only be required to help the process-servers of the court in serving the processes.

29. Yes; but a change of address of which due notice is given should also be permitted. Where parties are represented by pleaders, service on pleaders should be held to be sufficient.

30. The suggestion may be a good one for the mofussil courts and for the Madras City Civil Court; but it will, I think, be found impracticable so far as the presidency small cause court is concerned having regard to the very large number of processes which each bailiff has to serve promptly and the class to which the litigants in the majority of the cases belong. I would rather make it incumbent on their part to give sufficient assistance to the bailiff to find out the place of abode of the defendant or the witness and also to identify them to the bailiff.

31. I do not think any special provisions are necessary to supplement the rules contained in the Code as to the framing of issues. The correct framing of issues depends upon how those rules are worked by the presiding judge. At present, owing chiefly to the heavy files which the judges have to cope with, they are unable to find sufficient time for settling the issues themselves in all the cases after examining the parties in court and making any further enquiry which may be necessary. It is for that reason that in some cases and particularly in cases where the parties are represented by experienced practitioners, the practice has grown up of accepting

issues as agreed to by them and framing issues only on points on which they are not agreed. This works fairly well in most cases and I would not regard it as an objectionable practice. No doubt it would be the best thing for the trial judge himself to frame the issues, if he can, in all cases. It may result in narrowing the enquiry in some cases but a great deal more of time will be taken up than at present for framing issues, with the result that the time left for the trial of cases posted for final disposal will be proportionately shortened.

32. I think they are very much neglected at present. The neglect as regards Order X is partly due to the parties not being present in court when the suit is posted for the settlement of issues. Their absence by itself would not in many cases be a serious impediment if the pleaders who appear for them are fully instructed as to all the material facts of the case but often they are not. It is open to the court to insist on the presence of the parties themselves at the framing of the issues and the court should insist upon their attendance wherever the same may be considered desirable. I may also observe that the practice of the judge himself interrogating the parties appears to be rather distasteful to the pleaders engaged in the case, particularly when they happen to be juniors, and the judges who have to work smoothly with the Bar sometimes defer to that feeling. While I recognise the importance of the Bench and the Bar co-operating without any friction, I think it is necessary that the judge should, especially in small cases where the parties are illiterate, himself interrogate the parties either at the settlement of issues in the case of regular suits or at the beginning of the trial in small cause suits. Such interrogations I have found very helpful in fixing the real issues in the case which not infrequently happen to differ from the formal pleas put forward by the pleaders.

As regards Orders XI and XII, parties and pleaders are themselves responsible for the neglect, the reason being the usual dilatoriness of the parties who in many cases begin to instruct their vakils fully only when the trial is about to commence, Moreover as the pleaders are paid only a lump sum *ad valorem* fee for their entire work in the case unlike the attorneys practising on the Original Side of the High Court, they have not the same incentive to attend to the preparation of the case for the trial as the latter. Except on the Original Side of the High Court there is no provision for taxing costs with reference to the several issues framed in a case and all that the court can now do where a trial has been unnecessarily prolonged is to disallow the costs, in whole or in part, of the party who has been in default, notwithstanding that he succeeds at the trial.

33. The examination of both parties at the beginning of the trial will no doubt tend to minimise the evidence and shorten the trial. There can be no objection to the party on whom the onus lies being required to be examined fully at the commencement of the trial. But as regards the opposite party, the examination should, I think, be confined to ascertain the points in controversy, particularly to elicit from him admissions as to material facts deposed to at the examination of the other party and also any further particulars as to his defence which may not have been sufficiently disclosed in the pleadings. He should, however, not be compelled to disclose his evidence or to be examined as his witness before the party on whom the onus lies closes his evidence.

34. Not strictly enforced. One of the reasons being the uncertainty as to a case set down for trial on a particular day being taken up on that day. The practice in the presidency small cause court, Madras, is for the party who wishes a witness to attend at the adjourned hearing to pay the witness batta through the court, in which case the court orally directs the witness to attend at the adjourned hearing. This has been found to work well in practice.

35. In some cases, yes. In all cases in which an appeal lies on questions of fact it would be both impracticable and undesirable to lay down definite rules as to the number of witnesses to be examined. The examination of too many witnesses takes place only where large interests are involved. Moreover the tendency of the appellate court is to look with disfavour upon the trial court refusing to examine any witness tendered for evidence on any material question of fact. I would not frame any rule giving power to the court to stop the examination of more wit-

nesses on any particular point, as such a rule is undesirable and impracticable, and also as even without such a rule judges now do control with the help of the bar the calling of too many witnesses. I may add that when the calling of more witnesses by any party would in the circumstances be vexatious, as for instance when the witnesses are to be called in support of a case which the evidence of the party himself has clearly disproved, the courts have an inherent power to refuse the examination of such witnesses; but in practice such cases are rare.

36. Yes. The suggestion made in this question is, in my opinion, one which may well be adopted; but prepayment of special costs should not be made a condition.

37. No. The suggestion is not desirable.

38. No.

39. No.

40. No.

41. There is often considerable delay owing to the difficulty of serving the proposed guardians and their unwillingness to act as guardians. The plaintiff may be required to state in his petition the names of all near relations of the minor, one of whom may be appointed as guardian-ad-litem, and notices may be issued to all of them simultaneously. As the order on the petition may have to be passed after all the persons named therein are served, there will often be considerable delay owing to non-service upon any of the persons named in the petition. I would not prescribe any hard-and-fast rule making it incumbent that all possible guardians should be named in the petition but it is easy to introduce a practice by which the plaintiff is required to name the near relations of the minor and in default of their consent to pay for the appointment of a court guardian and this procedure has been sometimes adopted even now in the presidency small cause court.

42. As far as I can judge *ex parte* orders and injunctions are not readily granted unless the court thinks there are sufficient grounds, and all such cases are posted for final orders after notice to the opposite party, as early as possible. No undue advantage is allowed to be taken by the parties applying for such orders.

43. No.

44. Yes. When in the opinion of the presiding judge the point of law is sufficiently clear.

45. The dates for original hearing are fixed by a ministerial officer specially deputed for the purpose with reference to the current work of the court. The dates for adjourned hearing are fixed by the judge himself or under his directions.

46. The pleaders are not consulted except in special cases, but their estimate as to the time required often turns out to be very much below the mark. Representations made by the pleaders themselves as to the posting of their cases are also carefully attended to with a view to suit their convenience, as far as possible, consistent with speedy disposal.

47. As a rule not. Except where the amount of work involved is very small, pleaders are as a rule appointed commissioners for taking evidence and they are not interested in prolonging the enquiry. The few cases of delay can be remedied by a little firmness on the part of the judge in declining to grant extensions of time for the return of the commission. I would not add to the existing powers of the commissioners. Whether the examination is to be by interrogatories or *viva voce* cannot be laid down by any rule but should be left to the discretion of the trial judge.

48. First part. No.

Second part. Yes.

49. As a rule a case once taken up for trial is tried continuously from day to day. But there are some cases in which it is found impracticable for various reasons to follow the rule. No hard-and-fast rule can or ought to be laid down. Any undue laxity in this respect on the part of inferior courts may be taken notice of at the usual inspection of the courts by the district judge.

50. Yes.

51. First part. Yes. The High Court may circularise the subordinate courts explaining what should be treated as 'commercial suits' and directing that such suits should be disposed of as speedily as possible. Special small cause courts may be established in commercial centres with jurisdiction up to Rs. 1,000, to which only experienced subordinate judges or members of the Bar of sufficient standing should be appointed.

53. Section 21 may be extended to execution proceedings as proposed, but it will not be of much practical importance.

54. The proposed extension is highly desirable.

55. A desirable amendment.

56. (*a*) Yes.

(*b*) No.

(*c*) Yes.

If the suggestion in the latter part of this question is adopted, as I think it may well be, the suggestions made in (*b*) and (*c*) will go.

57. The proposed amendment of section 66 is worth adopting.

58. The proposed restrictions may operate harshly upon judgment-debtors living in remote villages. When payments are made out of court, the judgment-debtor generally obtains receipts from the judgment-creditor and cases, where payments made out of court are disputed, are not many.

59. The alteration suggested in the first portion may be adopted. I am not for deleting or modifying the second proviso to Rule 16 of Order 21.

60. I am in favour of retaining Rule 21 of Order 21.

61. (*a*) The special notice may well be dispensed with except when the decree is sought to be executed against the legal representative of the judgment-debtor. Where notice is required, it may be made part of the notice of the execution petition in which the substantial relief is asked for.

(*b*) From the answer to part (*a*) I am not in favour of deleting Rule 22 altogether. It should be retained so far as the execution is sought against the legal representatives, subject of course to the discretion vested in the court by the last clause of the rule.

62. A rule that there should be no interim stay in the case of money decrees may sometimes work hardship. I think the discretion which the proviso (clause 3) now gives is quite ample and no modification is required.

63 and 64. Special notice to the judgment-debtor must be given only for settling the sale proclamation and a copy of the draft sale proclamation should also be served on the judgment-debtor with the notice. No separate notice is necessary at any further stage of the execution proceedings.

Save as stated above, an order made at the initial stage requiring the judgment-debtor to be present at subsequent stages would be sufficient.

Attachment of property has to be made before the sale proclamation can be settled; hence the writ of attachment and sale proclamation cannot be issued at the same time. Service of notice of the execution petition on the vakil should be held to be sufficient service so long as his vakalatnamah is not revoked by the client or the vakil has not intimated that he retires from the case, and refusal by the vakil to receive a notice served while his vakalatnamah is in force, may be taken as tantamount to refusal by the party. There will be no difficulty in the practical working of such a rule.

65. No.

66. (*a* and *b*) Compelling plaintiffs to file encumbrance certificates with their plaints will add to their costs materially and much time also will be lost. So far as the presidency towns are concerned there are more mortgages effected merely by the deposit of title-deeds. As a rule all encumbrancers who are known to the plaintiff

are made parties under the existing rules. Non-joinder of a party should not by itself lead to the dismissal of a suit.

(*c*) Yes.

(*d*) This suggestion does not commend itself to me as it may work hardship on innocent prior encumbrancers.

(*e*) The time is fixed by the court with reference to the circumstances of each case and I think, on the whole, the discretion is soundly exercised. Some time is necessary for payment of the amount as determined by the decree.

In simple mortgage suits there need not be two separate decrees, *viz.*, a preliminary decree followed by a final decree. In cases where a personal decree can be passed against a mortgagor the decree itself may provide for such relief, conditional upon the security being first exhausted.

67. Not much. I do not think the discretion now vested in the appellate court should be interfered with. The existing rules if worked with discretion are sufficient to prevent delays. The proposed provision for awarding exemplary compensation is undesirable as it will only result in many unfounded claims being put forward for such compensation the decision of which will often involve protracted enquiry.

68. In many cases such injunctions are granted only subject to such conditions as seem to be proper. There should be no hard and fast rule fettering the discretion of the court in such cases as to when and what conditions should be imposed.

70. Yes; in cases where it is made to appear to the court that the judgment-debtor has absconded in order to evade the execution of the decree, the court dispenses with notice where otherwise notice to the judgment-debtor is necessary. Provisions for arrest and attachment before judgment operate to a great extent to prevent such delays.

72. Where the law requires that a document should be attested, I think it is only right that it should, when its genuineness is contested, be proved by an attesting witness wherever possible.

Second part. No.

73. First part. Yes. By consent of both parties such a practice has even now been adopted in some cases.

Second part. There is no doubt, parties often complain of delays in obtaining certified copies from some offices or courts. That is a matter which can and ought to be easily rectified by administrative orders.

74. The period of limitation in suits against Government may be reduced to 30 years. The period of 60 years in Articles 147 and 148 might be reduced to 20 years.

76. Partitions of immovable property should be effected by registered documents, where the value of the properties involved is not less than Rs. 500.

77. I think it is very desirable that partnership agreements with a capital of Rs. 500 and upwards should be evidenced by registered instruments. Oral partnerships are only too common at present and in most cases the parties are not even agreed as to the terms of the partnership and sometimes even as to who the partners are, and considerable time is taken up in determining those questions of fact.

78. First part. Yes. But as the courts have taken a different view sufficient time should be given before the proposed change by enactment is given effect to.

Is it intended to do away with equitable mortgages in the presidency towns which are effected without any document at all but merely by deposit of title-deeds ?

79. I am not in favour of the suggestion as its operation will more often result in serious hardship.

80. No change in the present law is desirable especially as thumb impressions of marksmen are as a rule taken and the documents are also attested.

81. Benami transactions are a fruitful source of fraud and it is therefore very desirable that they should be discountenanced as far as possible and should be recognised only in the interests of third parties who have just claims against the

real owner. As benami transactions have been uniformly recognised till now the proposed change in the law should not be retrospective.

82. The court-fees now imposed are sufficiently high and should not be enhanced. Whether a suit is frivolous or vexatious can, in most cases, be known only after the trial and the proper way of dealing with a party bringing such a suit appears to be to direct him to pay additional costs to the opposite party $\frac{\text{and}}{\text{or}}$ additional court-fees.

In the Presidency Small Cause Court, however, there is room for the salutary application of the suggestion made in this question. Under the rules framed for the court, no court-fee is required to be paid on the memorandum of new applications, which are really appeals on questions of law. The result is that the court is flooded with a very large number of frivolous applications, which probably would not have been thought of, if the party had to pay court-fee for the application.

83. A fairly large proportion of persons who enter into mortgage transactions are illiterate and unable to sign their names; that is the case even now in the Presidency Town. I think therefore that the safeguard of attestation which the law now requires should be retained. In this respect I think there should be no differentiation between mortgages on the one hand and sales and leases on the other. In practice very few sale-deeds and leases are unattested.

84. I am not for any change in the existing law.

86. Yes. The difficulty is not so much due to the number of reports, but to apparently conflicting decisions of the same High Court which are reported in the official and the various unofficial reports. Important decisions are sometimes not reported at all or early enough in the authorised reports. It is therefore by no means desirable to confine the citation of cases to authorised reports only, as suggested in some quarters. No judgment should be published in any journal or report without the special permission of the judges concerned.

87. Codification of the branches of law which the courts have to administer should no doubt help to a considerable extent the speedy disposal of suits involving questions of law; but considering the amount of case law which has accumulated in respect of various sections of the already codified law which have to be frequently applied, the efficacy of codification to make justice speedy and economical should not be overrated.

Codification may be attempted in the case of Hindu Law, Muhammadan Law and also the Law of Torts.

Diwan Bahadur C. R. TIRUVENKATA ACHARYAR, Chief Judge, Court of Small Causes, Madras, called and examined on Tuesday, the 29th July 1924.

Sir T. Desikachari.—*Q.* You were a city civil court judge ?

A. Yes.

Q. I think the city civil court has been working for more than 20 years ?

A. Since 1893.

Q. And the jurisdiction of that court is to try suits not exceeding Rs. 2,500 ?

A. There was a proposal that it should be raised to Rs. 5,000, but the proposal was not received with favour. It was made some years ago.

Q. The present jurisdiction of district munsifs is up to Rs. 3 000 ?

A. Yes.

Q. You have very great experience of the city civil court ?

A. Yes, more than seven years.

Q. And you find that the city civil court is of immense use in relieving the High Court of a number of original suits ?

A. Quite a large number of suits. The city civil court is a very popular court.

Q. And the city civil court disposes of as many contested suits as the High Court ?

A. Yes, certainly.

Q. And from the public, from the traders and from the associations of commerce there is no objection to the quality of the work that is being done by the city civil court ?

A. I am not aware of any such objection.

Q. With regard to appeals, I suppose appeals from the city civil court compare quite favourably with the appeals on the Original Side of the High Court ?

A. I think so Appeals from the city civil court and appeals from the Original Side of the High Court are heard by the same bench.

Q. One of our co-opted members was your successor and both of you can testify to the percentage of confirmation being higher in the case of the city civil court ?

A. Yes, and that will also appear from the figures.

Q. I am putting you these questions with a view to having on record what our experience in this presidency is with regard to the city civil court ?

A. I think the city civil court has been a very useful institution in Madras.

Q. And there was a proposal to increase its jurisdiction ?

A. Yes, I have mentioned it already. The proposal was to raise it to Rs. 3,000 so that it may be uniform with that of district munsifs. Of course the judges who are appointed to that court are generally of the status of the district judge though their jurisdiction is less. I think the chief ground on which the proposal was not accepted was that it might interfere with the jurisdiction of the High Court. I made that proposal at the suggestion of one of the members of the Government and I sent in a regular memorandum.

Q. You are Chief Judge of the Small Cause Court and you have considerable experience of the work there ?

A. Yes for 3 years.

Q. You seem to think that duration of suits there should not be less than six months ?

A. What I mean to say is that there are many suits in which litigants have to come from the mofussil and there is great difficulty in serving the defendant. The suit is generally not taken on the first day and many litigants who come from the mofussil prefer to have an adjournment instead of waiting here indefinitely.

Q. What is the number of cases in which leave to sue is obtained ?

A. It is between 3,000 and 4,000.

Q. Out of 18,000, and in all these cases the parties reside in the mofussil ?

A. Yes.

Q. Why should a small cause suit take six months for disposal ?

A. I do not say that all cases must take six months. Considering the volume of the work, if we are to give satisfaction to the parties so that they may not complain that they have not been fully heard, we cannot finish a case within six months.

Mr. Sastri.—*Q.* In 1916 the average duration was only 35 days, in 1920 it was 62 days, in 1921 it was 77 days, in 1922 it was 107 days ; and last year it was about 150 days. Can you give any reason why in 1916 a contested suit took 35 days, and why last year it took 150 days ?

A. As a result of the war there have been many contested suits which were keenly contested by the parties, and also the number of contested suits has increased considerably, and recently there have been many cases under the City Tenants Protection Act.

Sir T. Desikachari.—*Q.* With regard to the City Tenants Protection Act cases, are there not very many cases in which neither the tenant nor the landlord has taken advantage of the Act ?

A. We do get some cases, and a case of this sort is very troublesome.

Q. So you think that the duration is bound to be as high as you say ?

A. Yes.

Q. You said something about the applications for new trial. You say that frivolous applications can be stopped by imposing heavy court-fees ?

A. I think so.

Q. At present they pay no fee ?

A. Nothing whatsoever.

Q. What sort of fee would you suggest ? You mean court-fee *ad valorem.*

A. You see that in such suits the time of three judges is taken ; the chief judge arranges for the bench. For admission only two judges sit instead of three.

Q. What I want to know is, what is your constructive proposal in the matter. Would you like to impose some fee or some sort of restriction to put an end to these frivolous applications for new trials ?

A. Generally 50 per cent. of these applications are thrown out at the time of issuing notice to the respondent.

Q. I quite follow that, but what sort of restriction would you propose ?

A. I would suggest the imposition of court-fee in proportion to the valuation of the suit.

Q. That is all ?

A. I have not considered any other aspect of the matter.

Q. Only for admission ?

A. Yes.

Q. I think a good number of these applications is rejected.

A. Yes, 50 per cent.

Q. I should like to know how many days in a month are taken in the disposal of these frivolous applications for new trials ?

A. Every Monday we take up these applications after 12 noon and then from 3 to 5 P.M. next day.

Q. There is one other question. Is it a fact that many suits are posted for one day and the parties have to wait with their witnesses, 15 to 20 in number. Is that so ?

A. These are unavoidable cases. About 40 or 50 cases are put down in every day's list and there are also petitions to get through.

Q. Are many days allotted each month for these applications for new trials ?

A. Every Monday, after 12 noon, we take up the cases which are fixed for the first hearing and then we have to take other cases.

Q. It is no business of the Committee to get an explanation. What we want to know is whether it is a fact that the parties have to wait with their witnesses ?

A. In some cases it is a fact.

Sir T. Desikachari.—Is it not possible to avoid it somehow ?

A. The question is one of time.

Q. The question is also one of discriminate posting ?

A. But the volume of work is much more than you can get through.

Mr. Radhakrishnaiya.—*Q.* Can it not be possible to post only a little more than sufficient work for the day ?

A. We cannot form a sound judgment.

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Chairman.—The point is whether owing to the congestion of work cases are put down simply to distribute them over a reasonable amount of time, regardless of whether the work can be coped with or whether only so much is put down as the judge expects to get through.

A. We do not expect the entire list to be exhausted. Sometimes heavy land acquisition cases are posted and our calculation is upset. In order to avoid adjournments sometimes older cases are sent to another judge as soon as he finishes his cases.

Mr. Justice Stuart.—*Q.* Does the registrar do the uncontested work ?

A. Uncontested work takes very little time.

Q. Ought not there be some arrangement by which uncontested work is separated from the contested work ?

A. There is no deputy registrar here, and as suits below twenty rupees and all the execution work have to be done by the registrar it is impossible to give him any more work.

Q. How would you like this system:—every case should come up before one officer—registrar—who will dispose of uncontested work and send the remainder to a judge for hearing and for fixing a date. You would not have anything except contested work coming before you and you know how many contested cases you are likely to get through.

A. As regards contested cases some are disposed of very soon and some take a long time.

Q. I went down to inspect a Presidency Small Cause Court and I found that as many as twenty contested cases were fixed for one day. I asked "How many cases can you get through in a day ?" The reply was "Two or three." Do you try to avoid that ?

A. What happens is this. The judge has to record a plea in contested cases. In some cases the contest is small and the judge has nominally to examine the parties and the case is disposed of.

Sir T. Desikachari.—*Q.* I wanted to know whether the complaint is true. Can you suggest any means of avoiding all this waste of time so far as the parties are concerned ?

A. The only thing to see is that the judges may not waste their time.

Q. Can you not give a sufficiently long date and see that a man does not come more than two times ?

A. Very often a case is adjourned for six or seven times and then the party who complains against adjournments himself applies for adjournment.

Mr. Justice Stuart.—As you know delay breeds delay. If the court wastes time the party also wastes time and if the court does not waste time the party also does not waste time.

Mr. Sastri.—Some four years ago a vacation judge used to sit every day during vacations, but now a change has been introduced and he sits only for two days in a week. Was that change introduced for the benefit of the judge ?

A. I do not know. I am not responsible for that change.

(*Mr. Radhakrishnaiya.*—I think he sits only to hear urgent applications.)

Sir T. Desikachari.—*Q.* Anyhow you agree that something must be done ?

A. Yes.

Q. There is one other matter. Is it true that when a defendant comes and says that he is going to put in his pleas the case is adjourned for putting in pleas but it is never reached again for weeks afterwards ?

A. That is not my experience.

Q. On the date fixed for filing the pleas the cases are adjourned and they do not see the light of the day ?

A. What happens is this. A client is in the mofussil and there is not sufficient time to serve him. In these cases adjournment is granted on the payment of costs to the other side.

Q. On the day on which the pleas ought to be filed nobody sees whether they have been filed or not ?

A. In such cases an order is made that the pleader is to file his pleas within a certain time and give a copy to the other side. I think only once such a case came before me and I ruled that no pleas should be put forward.

Q. This irregularity then has been taken notice of ?

A. Yes, so far as I am concerned.

Mr. C. V. Viswanath Sastri.—*Q.* Is the public satisfied with the present state of affairs in the Small Cause Court ?

A. I think the question that Sir T. Desikachari put to me was about the city civil court.

Q. At any rate you agree that there are some dalays in the Small Cause Court ?

A. Yes. We have made a representation to the High Court.

Sir T. Desikachari.—The Chamber of Commerce also complained ?

A. Yes. We replied and gave our explanation, but then they said that there were other cases which they were unable to trace.

Mr. Sastri.—And in the Legislative Council there was a motion to reduce the grant for Small Cause Courts by hundred rupees ?

A. Yes there was. Nobody is exempt from criticism.

Sir T. Desikachari.—I put to you the question not to criticise, but in order to get from a judge of your experience a constructive proposal to minimise this evil.

A. The High Court asked us to give some suggestions and, one proposal which we made was that the jurisdiction of the registrar should be raised to fifty rupees and a deputy registrar should be appointed to relieve the registrar of a good deal of his ministerial work. I think the High Court has approved of this suggestion and they recommended that this step should be taken. I have not heard anything further, but this suggestion was made more than six months ago.

Q. You were district and sessions judge and you have a fairly large experience of the mofussil conditions.

A. I was a judge only for about a year and a half ; but I had practice in the mofussil.

Q. What do you think of the way in which munsifs are posted now ? Are they posted to proper stations having regard to the average standard of work which should be expected of them with regard to that station ?

A. One thing which struck me was that very junior munsifs were posted to outlying stations. I think it would be very much better if they are posted to headquarter stations where there are sub-judges and district judges ; they might gain some experience and they would not find it so difficult to move with the Bar as in the outlying stations.

Q. I meant to ask you whether it is not a fact that junior munsifs are posted to heavy stations and senior munsifs capable of doing much work are posted to light stations without any regard to the amount of work that has to be turned out at that station ?

A. In some places like Narasapur and Tanuku, juniors were posted. They are heavy stations.

Q. With regard to the devolution of powers, don't you think that small cause jurisdiction to the extent of Rs. 1,000 could be granted to certain sub-judges ?

A. Yes.

Q. Have you any idea as to how many sub-judges could be invested with such powers ?

A. They wanted to expedite commercial suits. I don't see how that could be done unless you establish small cause courts.

Q. What commercial suits are there in the mofussil, generally ?

A. I suppose in some places like Madura there may be some commercial suits.

Q. There would be very few which are called commercial suits.

A. So, I say that the High Court will explain what are commercial suits.

Q. You don't mean suits upon pronotes or hundis for money.

A. I understand only in a general way, where the party is a merchant.

Q. So, your suggestion is that in selected stations small cause power might be given to the extent of Rs. 1,000 in the case of selected sub-judges. You have no definite idea as to the places in which such special jurisdiction could be given.

A. I have not thought about it. In the case of munsifs the small cause jurisdiction could be raised to Rs. 200. During the period of probation they should have no small cause work at all. After the probationary period is over, they could be invested with small cause powers up to Rs. 200. Now-a-days the rupee has fallen in value and Rs. 200 is just like Rs. 100, 15 years ago.

Q. With regard to appeals you were hearing the discussion here. What do you think of second appeals up to Rs. 1,000 being allowed only with the leave of the court which hears the appeal in the first instance; special leave being taken in all cases of second appeals of the value not exceeding Rs. 1,000 or 500.

A. I won't make that a condition where the lower appellate court reverses the judgment of the first court. Where the judgments are concurrent you may impose some such condition except with regard to suits relating to land.

Q. I don't want to repeat the whole thing. You were here when the matter was put to the advocate general as to whether anything could be devised to reduce the number of second appeals.

A. It all depends upon whether you have got a sufficiently satisfactory first appellate tribunal. If you have got a satisfactory one, then of course you can curtail without much compunction, the right of second appeal. But so long as the tribunal which hears the first appeal is not considered by the public to be quite satisfactory, I don't think you should unduly curtail the right of second appeal.

Q. The question is whether it is unduly or duly. The suggestion that was made was that in cases of second appeals of the value not exceeding Rs. 500 there should be no second appeal unless special leave is given by the High Court. What do you think of that ?

A. I don't know.

Q. What do you think of the other suggestion to have benches of two selected senior subordinate judges for hearing and deciding first appeals finally ?

A. I think it is a good idea. Any decision arrived at by two experienced subordinate judges sitting to hear first appeals must be considered to be much more satisfactory.

Q. There would be no difficulty in selecting the judges needed for constituting the bench.

A. I think not.

Dr. DeSouza.—Q. Do you think that the decision arrived at by two experienced subordinate judges sitting together would be more satisfactory than that arrived at by one experienced subordinate judge sitting by himself ?

A. I should think so. I take it that each judge should take part himself and judge for himself and not simply agree with his colleague. Just as you constitute Benches of two judges in the High Court, I think the same principle might be adopted.

Mr. Sastri.—Q. What do you think of second appeals being heard by a single judge of the High Court without having a Bench ?

A. I have no experience so far as those questions are concerned.

Sir T. Desikachari.—*Q.* There are many other matters with regard to which you have given your opinion. With regard to benami transactions in general what do you think of the suggestion relating to the amendment of section 66 of the Civil Procedure Code in order to prevent the plaintiff as well as the defendant from setting up a plea of benami ?

A. I think in my written answer I have agreed with that suggestion.

Q. You have said in your written answer that the proposed amendment of section 66 is worth adopting. I want you to develop that point.

A. On the whole I approve of the suggestion made in the questionnaire.

Q. You also approve of the suggestion of doing something to put down benami transactions ?

A. Yes.

Q. Would you like to have a law saying that all benami transactions should be abolished ?

A. I think benami transactions should not be abolished in so far as they do not prejudice the man who is really entitled to the property. You cannot prevent this sort of transaction altogether.

Q. Having regard to your answer to questions 57-87 I do not see what exactly your views are.

A. I thought it was a general question and so I did not give anything definite.

Q. With regard to registration of partitions, you are in favour of partitions being evidenced by an instrument and if there is an instrument it should be registered.

A. Over Rs. 500 it must be registered because we have experienced great difficulty.

Q. Your view is that it must be in writing ?

A. Yes.

Q. It will minimise the amount of oral evidence now adduced by parties if you enforce a rule like that ?

A. Yes.

Q. What about partnerships ?

A. It will be a wholesome rule if something is done to discourage oral partnership. It should be registered but in commercial transactions it need not be registered ?

Q. Why should it not be registered ?

A. Registration gives some publicity which commercial people do not like.

Q. So you would make a distinction between partitions and partnerships ?

A. Yes. I have modified my answer because I had to prepare my memorandum rather hurriedly.

Mr. P. SUBBIAH MUDALIYAR, Acting District Judge, Nellore.

Written Statement.

1-A. (2) *District and Sub-Courts.*

Original suits—

(*a*) Title, one year.

(*b*) Money, six months.

Regular appeals, six months.

Civil miscellaneous appeal against orders, three months.

Small causes, three months.

District Munsif's Courts.

Original suits—

(*a*) Title, nine months.

(*b*), (*c*) and (*d*) Money, rent and others, six months.

Small causes, three months.

Claim proceedings, three months.

2. Yes.

Main causes of the delay :—

Delay in execution of processes.

Delay in obtaining copies.

Bad posting of cases.

Congestion of work in several courts.

Neglect of the provisions of Orders X to XII, C. P. C. (*vide* answer to question 32).

3. *Remedies suggested.*—Separate nazarat. As far as possible, each court should have a separate process establishment so that the process-servers may be entirely under the control of that court. This would enable the court to have its processes executed efficiently and promptly. Where processes are sent to the central nazir for execution, even the execution of urgent processes may be delayed on the ground that he has to deal with the processes of several courts.

The court should exercise personal supervision over the work of the process establishment, and should devote about half an hour per day for this work. The court should be able to spare this time by its judicial work not being made unduly heavy.

If the central nazarat system is to be continued, it should be attached not to the district court, but to the court of the lowest grade in the station, as the district judge may not be expected to exercise real effective supervision over the process establishment.

For similar reasons, there should be a separate copying establishment for each court or the central copying establishment should be attached to the court of the lowest grade in the station.

Bad posting of cases.—As an officer's efficiency is ordinarily judged by the quantitative test, there is generally an unwholesome desire to get up statistics ; and more cases than could possibly be disposed of are posted in the hope that some of them might be compromised or otherwise easily disposed of. If cases are properly posted the number of unnecessary adjournments could be greatly reduced.

In the beginning of each quarter, every subordinate judge should submit a statement to the district judge giving particulars of the work for disposal, and what he can reasonably expect to dispose of. Original suits and other proceedings of a contentious nature should be divided into three classes : ordinary, short, and long causes, for the purpose of proper posting of cases and also for report to the district court when necessary. Short causes, like small causes, may be posted to special days for disposal.

Those long causes which could not be conveniently taken up by the court for trial without serious detriment to the other work should be specially brought to the notice of the district judge. And if the latter is satisfied as to that, he should address the higher authorities to have a special officer posted for trying such causes.

Even otherwise, each court should have manageable work, having regard to the standard mentioned under question 7. Where on the representation of the subordinate judge, the district judge is satisfied that the work is really too much for one officer, he should take steps at once to give relief.

The district judge should have sufficient time to exercise effective supervision over the work of the subordinate courts and be a real guide. He should be in touch

with the work of each court and should acquaint himself with the nature of litigation in each court and the quality and quantity of the work of each officer.

As far as possible, every court should be presided over by a judge whose mother tongue is the language of the court. Although a judge may have passed the vernacular test in another language, he cannot be expected to deal with manuscripts in that language with the same ease with which he could deal with manuscripts in his mother tongue.

4. I confine myself to the recruitment of Indians. Except for the High Court, the recruitment of judges should always be at the bottom. Ordinarily, judicial officers are recruited from the Bar, and every care may be taken in making proper selections in the first instance. Men who have well handled a good number of cases and specially original suits should have preferential claims.

One's experience as a judge should not disqualify him for further promotion.

A severe test may be applied in judging the work of a judicial officer ; and every one who satisfies that test must have a fair chance of becoming at least a district judge some years before his retirement. Recruitment from the Bar direct as subordinate judges or district judges would chill the spirit of the whole service and take away from it the incentive to do hard work in a cheerful manner.

There should be a fair chance for the best men to go to the High Court.

There should be a real appreciation of good work done by a judicial officer. At any rate, in the case of officers in the higher grades, their work should be closely scrutinized—say by three High Court judges—with a view to their being declared fit for special promotion, or not. Definite and well recognised standards should be applied for testing the work of an officer. How appellate judges have reviewed his work may be one test. A copy of every appellate judgment may be sent to the officer concerned and a file of his printed judgments along with the appellate judgments, if any, may be maintained, so that the file may be open to inspection by higher judicial officers.

5. Yes. There may be a special list of district judges and sub-judges who can give proper training for district munsifs. Every district munsif after his appointment might work under the immediate supervision of one of those judges for some time—say, 3 to 6 months—and learn work both administrative and judicial. During that period, the district munsif may be empowered to dispose of such simple matters as may be assigned to him by the judge under whom he works.

6. Yes, to a certain extent. The practice of transferring district munsifs once in three years may however continue, but as far as possible, the transfers may be made during the mid-summer vacation. The rule of 3 years need not be strictly enforced. Ordinarily an officer should not be allowed to leave part-heard cases of a complicated nature.

7. There should be a quantitative standard of work fixed for each court with reference to the average work turned out during the preceding 10 or 15 years. The district judge should see that the officer's work does not fall below that standard, unless there are special reasons, such as disposal of long causes.

8. Yes. As far as possible, no more than one court of the same grade should be located in the same station.

9. Yes.

10. Ordinarily, district munsifs after five years' service may be given small cause jurisdiction up to Rs. 200 and after they pass the efficiency bar, up to Rs. 500.

As regards original suits, the jurisdiction need not be enhanced.

11. No.

12. Yes.

(*a*) Judicial. All courts may be invested with jurisdiction under the Succession Certificate Act. Subordinate judges in this presidency have recently been given jurisdiction to try land acquisition proceedings. They may be given jurisdiction also under the Probate Act and Guardian and Wards Act.

13. Investing of subordinate judges and munsifs with jurisdiction as above will, I believe, be acceptable to the public. There is no need to select officers. such selection would also lead to complications, *e.g.*, when an officer invested with powers is succeeded by one not so invested, the proceedings will have to be transferred to another court.

14. Yes. Village courts may be given exclusive jurisdiction up to Rs. 50 and panchayat courts up to Rs. 100 in suits of a small cause nature. The work of several courts has not been good. Greater care should be taken in the selection of presidents and members. If appointments are made by the Collector, in consultation with the district judge, and on a consideration of their special qualifications, there will be an improvement. The work of these courts requires to be closely scrutinized and it should be made possible for district munsifs to find sufficient time for such supervision.

15. Yes. The following classes of suits may be tried by the small cause courts subject to plaints being returned under section 23, Provincial Small Cause Courts Act, in suitable cases.

Provincial Small Cause Courts Act, schedule (*ii*), article 6, suit on simple mortgages.

Article 4, suits in ejectment based on registered leases.

Article 8, suits for rent based on written contracts.

Article 31, suits for main profits, when title is not in dispute.

Article 38, suits for arrears of maintenance based on registered documents.

Answer to the latter part of the question. No objection.

17. No.

18. Yes. Right to appeal may be curtailed in the case of several interlocutory applications ; as also in execution cases where the order relates only to money or movables and the value does not exceed Rs. 200 in a district munsif's court and Rs. 500 in other courts.

24. In original suits, evidence of witnesses may be recorded by a shorthand writer in English. In the case of a senior judge, a translator may be employed. In other cases, the judge himself may dictate to the shorthand writer. The shorthand transcript may be read or interpreted to the witness and corrected where necessary and signed by the judge. It may be transcribed in longhand afterwards and the transcript also signed by the judge. This will materially reduce the time occupied in the trial of cases, and also enable the judge to have a better grasp of the case as it proceeds.

In original and small cause suits for money or movable property, plaints may be in simple form and court-fees payable thereon may be specially low. If the defendant appears and admits the claim no further fee may be collected on the plaint.

If the defendant allows the suit to proceed *ex parte* some higher fee may be collected.

If he contests the claim, the full fee may be collected.

Provisions of section 83 of the Transfer of Property Act may be extended to cases of money due otherwise than on a mortgage, *i.e.*, money due on promissory notes or other documents.

This would afford facilities to honest debtors to discharge their obligations without being obliged to pay heavy court costs. Some wavering debtors may also be induced to admit honest claims.

25. Service by registered post (*vide* answer to question 28).

Procedure under section 105, Transfer of Property Act, may be extended to civil suits. To avoid fraudulent service and fraudulent obtaining of decrees as far as possible the following remedies are suggested :—

A defendant who is duly served may be compelled to appear in person or by a pleader or to send an affidavit acknowledging receipt of summons sworn before a magistrate or a judge (but not a village munsif) or before a sub-registrar.

26. Forms of plaints given in the Civil Procedure Code are not adhered to generally. Pleaders do not pay sufficient attention to the drafting of the pleadings when they are in the vernacular. Where the pleadings are in the vernacular, an English translation may be insisted on, and that would be some guarantee that the pleader has paid personal attention to the drafting.

27. Yes. Pleadings are not concise, and raise various points which are not intended to be relied on at the trial.

28. Summonses and notices may be sent by registered post prepaid for acknowledgment. Such service alone may be sufficient in the case of public servants. But in the case of others, such service may be in addition to the usual service by the court establishment.

Village officials may serve processes, but they should be paid a certain fee, and they should be amenable to the control of courts.

29. Yes. It is worth a trial.

30. The suggestion is good, and it is even now adopted in several courts in the case of special processes, *e.g.*, arrest warrants, attachment warrants, etc.

31. It is generally found difficult to secure the presence of pleaders concerned, at the time of the framing of issues. Except in simple cases, the framing of issues may be done on special days. Unless both sides have agreed as to the issues, pleaders should be present at the time of settlement of issues. If a pleader fails to attend then the defence should be struck off.

32. Generally neglected. Reasons :—

(1) Dilatory habits of clients.

(2) Pleaders neglecting to study their cases before the trial stage is reached.

(3) Congestion of work in courts and the anxiety of judges to rush through cases at the preliminary stages in their anxiety to reach contested cases ready for trial.

When more suits are instituted in a court than could possibly be disposed of by that court, the tendency is not to pay sufficient attention to cases at the preliminary stages, as a good number of them may not come up for trial before that officer. To remedy this, every court should have quite manageable work and no more. As soon as the work becomes unmanageable, relief should be given at once. The additional court may generally deal with cases recently instituted and those instituted after the establishment of that court.

33. Yes. I agree.

34. Not generally. Cost of issuing summonses unnecessarily may be disallowed.

35. Yes, to a certain extent. Each party may be required to deposit into court a sum of money as may be fixed by the court. If the court ultimately finds that witnesses have been unnecessarily cited or examined, by a party, he may be made to pay to the other side such costs as may be fixed by the court.

36. Having regard to the fact that several people are ready to sign in an obliging manner any affidavit presented to them, the system of proving cases by affidavits is not likely to work well.

37. I think courts should have discretion to fix a time limit. The power, however, should be exercised only sparingly and for good reasons.

38. The application of Order 37, Civil Procedure Code, may be extended to all suits for money based on written contracts.

41. Yes. The remedy suggested is good and is already adopted in some courts.

42. Yes, to a certain extent.

Remedy.—A court of first instance should ordinarily insist on the oral examination of a person competent to speak, of his own knowledge, as to the necessity for an *ex parte* order.

The party may also be required to deposit money or furnish security for damages.

43. Generally not.

44. Generally.

45. Not generally. This has led to bad posting and delay in disposal to some extent.

Remedy.—Every judge may be required to maintain in his own hand a hearing book in respect of all contested cases.

46. Such consultations are rare for the reason that pleaders do not wish to commit themselves. Pleaders may however be freely consulted and an attempt made to get them to fix the time at least approximately. Such consultations may be made obligatory and the judge required to make a note of the same.

47. Yes. Commissioners for examination of witnesses, who are generally lawyers, should have the same powers as the court to disallow questions, etc.

I would not insist on written interrogatories, when either party claims an examination *vivâ voce*, unless the evidence required is of a very formal nature.

48. Yes, to a certain extent.

The amount of day costs is fairly sufficient. The maximum pleader's fee allowable may however be raised to Rs. 15 in a district munsif's court and Rs. 25 in a district or sub-court.

49. The rule is not strictly observed on account of various causes, *e.g.*, bad posting, congestion of work, etc.

The rule can be enforced if the work in the court be not too much for one individual.

As already indicated, relief judges should take up the trial of specially long causes which cannot be conveniently tried by ordinary courts without detriment to their other work.

52. Besides the amendments suggested in answer to questions 53 to 70, the following are suggested :—Agreements which are entered into before decree and which are at variance with the terms of the decree, should not be recognized by the executing court. Such agreements should be pleaded in the suit itself.

Similar agreements entered into after decree should also not be recognized by the executing court, unless they are in writing and filed into court by both parties and sanctioned by the court.

53. Yes. The principle of section 21, Civil Procedure Code, may be extended to proceedings in execution.

54. Yes.

55. Yes.

56. The period of 12 years given in section 48, Civil Procedure Code, may stand in the case of all decrees.

The decree-holder may be allowed to execute the decree at any time he finds it convenient to do so, if he does not exceed the 12 years' limit, provided he has obtained an order for execution after service of notice on the judgment debtor within a certain time.

57. Section 66, Civil Procedure Code, may be altered as suggested.

58. Order 21, rules 1 and 2, may be altered as suggested.

59. Yes. This may be allowed.

Second proviso to rule 16 may be modified by execution against other judgment debtors being limited to the extent of their shares.

In the absence of any indication in the decree *contra*, all judgment debtors may be presumed to be liable equally as among themselves.

60. Order 21, rule 21, may be deleted altogether.

61. (*a*) Special notice under order 21, rule 22, is not necessary. A consolidated notice as suggested is sufficient.

(*b*) Order 21, rule 22, may be deleted altogether. The court will of course have discretion to issue notice in any case in which it considers such notice is necessary.

62. An absolute prohibition of an *interim* stay may work hardship in some cases. The court may be given the discretion to grant a stay of execution of a money decree, on terms.

63. No necessity for special notices. One notice as suggested is enough.

64. Yes. The judgment-debtor should be served with a copy of the proclamation of sale.

Although this might involve additional work to the process writer, justice would seem to require it.

Sale proclamation should not issue before it is ascertained what property has actually been attached.

The rules suggested are not likely to work well as the vakil who appeared for the judgment-debtor in the suit would generally report that he has no instructions in the execution proceedings.

65. The system of the execution of arrest warrants by village officials may be given a fair trial and it is likely to work well, if the village officials are made amenable to the control of the court and paid special fees (*vide* also answer to question 28).

66. (*a*) and (*b*) This suggestion may prove to be a needlessly costly one in several cases, where claims may be satisfied before properties are brought to sale.

(*c*) If the plaintiff so desires, even paramount title set up by parties to the suit should be finally determined in that suit.

If the plaintiff does not so desire, the names of the parties setting up paramount title may be struck off.

(*d*) Where all puisne and prior encumbrancers are before the court, sales may be free of all encumbrances, the rights of encumbrancers being attached only to the money in court.

(*e*) The time granted ordinarily varies from one month to six months.

No time for payment is necessary.

In simple mortgage suits there is no necessity for a final decree or a separate personal decree. There may be a consolidated decree once for all.

67. (1) Yes.

(2) Appellate courts may demand a security before passing orders staying proceedings.

(3) A money compensation may be awarded by a summary order.

68. Yes.

70. (1) Yes.

(2) The officer entrusted with the warrant should have power to arrest the judgment debtor even outside the jurisdiction of the court.

If village officers are made amenable to the direct control of the court, they could render material help in arresting judgment debtors (*vide* also answer to question 65).

(3) The provision is not always effective.

Courts may be given a larger discretion to order arrest or attachment.

In any case, attachment of immovable property may be more freely ordered and no claim for compensation in respect of such attachment should be entertained, when the plaintiff ultimately succeeds in the suit.

71. The provisions as to the admissibility of secondary evidence should be more elastic.

72. No. The provision requiring the attestation of mortgage deeds should go.

(2) Yes. So far as parties to the mortgages or persons claiming under them are concerned, the mortgage may be presumed to be valid.

73. (1) Yes.

(2) Ordinarily 1 to 3 months.

74. Time for redemption of a mortgage may be reduced from 60 to 20 years.

Endorsement of payments and acknowledgments on registered documents should not give a fresh start for limitation unless the endorsements are also registered.

75 and 87. The Hindu Law relating to reversioners' widows and other female heirs, and co-parceners ought to be codified.

The law as now administered, with all its uncertainties involves many families in protracted and ruinous litigation, and courts are often called upon to decide whether alienations made by female heirs 50 or 60 years ago were for valid purposes. The task is too much for courts and the burden of proof is also unduly onerous on the persons in possession. It is also not desirable that title to property should remain in an uncertain condition for long periods.

It may be made a rule that all alienations by limited owners require the previous sanction of the court or the rule may be that alienations by such persons should not be questioned after an interval of say, 6 years.

76. Yes.

77. Yes.

78. Yes.

79. Yes.

80. Yes.

Provided the amount involved is Rs. 500 or more. When the amount is less than Rs. 500 thumb impressions ought to be deemed sufficient.

81. The system is demoralising and should go.

In respect of *benami* transactions already entered into, two years' time may be allowed for filing suits and no new transactions should be recognized.

82. No.

83. No.

84. All agreements savouring of champerty and maintenance shall be void unless they are filed in the suit itself to which they relate and sanctioned by the court.

86. Yes. Section 3 of Act XVIII of 1875 should be modified by enacting that no court shall hear cited or shall receive or treat as an authority the unauthorized report of any case, *i.e.*, the words " be bound to " should be omitted from the section as it is.

Some suggested changes in the adjective law. Oral leases for more than a year, and oral agreements to convey immovable property shall not be valid.

Mr. P. SUBBAYYA MUDALIYAR, District Judge, Nellore, called and examined on Wednesday, the 30th July 1924.

Mr. Justice Stuart.—*Q.* How long have you been in the service ?

Mr. Subbayya Mudaliyar.—*A.* 24 years.

Q. And you have been acting as district judge for some time now ?

A. Since 1920.

Q. How long have you been in Nellore ?

A. Since January.

Q. How many courts are there in Nellore ?

A. One sub-court and five district munsif's courts.

Q. Is criminal work heavy there ?

A. No, criminal work is normal.

Q. I see that there are only 30 to 40 sessions cases in a year and the number of criminal appeals is not very large ? How is it that criminal appeals are so few in Madras ?

A. Specially in Nellore, I find the number is very small. The work is fairly satisfactory.

Q. It is extraordinary that the number of criminal appeals is so small. You have got big districts and still there are very few criminal appeals.

A. So far as crime is concerned Madras is not like the Punjab or United Provinces. There are of course some districts in which crime is rampant, such as Coimbatore, Trichinopoly.

Q. So it means that from the point of view of the district and sessions judge, criminal work is not heavy in Madras ?

A. There is one feature in Nellore and that is that in sessions cases we have a very large number of witnesses to examine.

Q. What are these cases ?

A. Some are murder cases and others are riot cases.

Q. In riot cases it is so. Do you consider that the police are apt to call too many witnesses ?

A. I think so.

Q. Can you not do anything to curtail the number of witnesses ?

A. In one case I gave a hint to the Government pleader and he has now dispensed with the examination of some witnesses.

Q. How much time have you to devote to your criminal work ? How many days in a week do you give to your criminal appeals and revisions ?

A. We always give preference to sessions work and other criminal work.

Q. Is not the arrangement in this way, that you fix sessions cases for the first Monday or second Monday of every month ?

A. That is the ordinary rule, but sometimes there is only one sessions case fixed and then we have some more committals and then we also post them.

Q. You don't throw out civil work for criminal work. Suppose civil appeals are fixed for the 23rd July and then a sessions case comes in. I think you don't stop the civil work to take up the criminal case first ?

A. Sessions cases are given preference. When we have a sessions case to try, civil work is adjourned.

Q. You think it better to keep the man who has paid money for the civil work waiting than to keep the criminal work pending ?

No answer.

Q. How many days in a year have you available for your civil work ?

A. We have made no calculation but we know how many days are devoted to criminal work.

Q. All right—let us proceed in this way. How many days in a year do you devote to your criminal work ?

A. 90 days.

Q. That seems to me a good deal.

In 1922 (you were not there, I suppose) there were only 34 sessions cases and only 47 criminal appeals and revisions. Now with regard to the civil appeals, I find that in that year in spite of the fact that there was very very little criminal work, the judge there,—not you—only disposed of 94 civil appeals and 14 contested.

civil suits. What does this mean ? I find that only 94 civil appeals were disposed of and 419 were left pending. Are things any better now ?

A. I think so. The increase in the civil appeals is due to rent appeals and they raise the number.

Q. What is your pending file now ?

A. About 380 appeals.

Q. You have brought them down ?

A. Yes.

Q. That is very satisfactory. The next point I want to ask is how much time you give to the inspection of courts ? Can you manage to inspect them once a year ?

A. Yes. I can manage to do so except in the case of a court which is situated 40 miles away. It was only inspected in 1920 and I now intend to inspect it.

Q. Do you find that your work is interfered with by the extra work, *i.e.*, electoral work and things of such kind ?

A. In my district there is not much electoral work. This work is generally given to subordinate courts.

Q. Do you manage to inspect your subordinate courts fairly well ?

A. Yes.

Q. Do you find that your subordinate courts are inclined to fix more work for the day than what they can possibly do ?

A. Unfortunately it is so.

Q. Did you try to stop them ?

A. The difficulty is this. When a judge is unable to get on with his daily work he ought to say so, but unfortunately he does not say so because he is afraid to say it to the higher authorities as in that case they think the man is an incompetent man and that he is not able to do his work.

Q. Suppose a district judge says that such a subordinate judge is a very capable man and is very hard working and efficient, then no body would condemn the subordinate judge ?

A. That is exactly what I have suggested in my memorandum.

Q. Now, let me ask you one thing. Suppose a big suit is filed in your district as I believe it frequently happens in Madras—such a suit as was filed in Sivaganga. Now, you are a district judge and you are told by your subordinate judge that such a suit has been filed and that it is impossible for him to handle this suit and to handle his ordinary work in addition, then would you ask for an extra man to do that work ?

A. Yes.

Mr. C. V. Viswanath Sastri.—But the difficulty would be that the Government would never give an extra man for this work. I know of a case which was a very big one and a request was made for an extra man but the man was never sent with the result that the case remained pending for 1½ years.

Mr. Justice Stuart.—*Q.* You say that you do not always get the assistance when it is necessary ?

A. Yes. As soon as we require relief it should be given to us.

Q. Do not wait until the mischief has been done, foresee what is going to happen and take precautions ?

A. Yes, and for that purpose there should be a standard for each court and having regard to that standard the district judge can see where the work is manageable and where it is not.

Q. In our province we have got a standard. We give minimum figures which each judge is supposed to reach and we reclassify the standard according to local conditions.

You are in favour, I see, of having separate nazarats. Would not that be rather expensive ?

A. Not much. I would be satisfied with a smaller number of men for each court and you can see that the cost is not increased. Now the central nazir is not under the subordinate judge and if we send an emergent process he can say that he has got many such processes.

Q. Has the district munsif got time to attend to this work ?

A. I can only say that his work should be slightly lightened.

Q. There was a suggestion to relieve judges entirely of this work by appointing an officer who may be called a registrar or a master who will take this sort of work altogether off the shoulders of district munsifs. Do you not think that if it is possible to take away the office work and work of supervision it would lead to enormous improvement in expedition and efficiency ?

A. I think that that officer should be a judicial officer.

Q. The proposal would be to either make him a judicial officer or to make him an officer in the judicial department. At any rate, he will be a trained lawyer and he would not be a ministerial officer.

A. He should have the chance of becoming a munsif.

Q. You are rather in favour of separation.

Now about posting, you make a great point of it. Of course if an intelligent man gives his mind to it he can avoid a great deal of these delays ?

A. Quite so, but where the work is manageable there only the court can be expected to do all this.

Sir T. Desikachari.—In some places the work is so much that it cannot be managed ?

A. Quite so.

Q. And then posting is done by clerks ?

A. Some few judges do it themselves.

Q. But the majority of them leave it to clerks ?

A. Yes.

Mr. Rao.—So the posting is really done by the bench clerk ?

A. In many cases. Only few judges post cases themselves.

Q. But if you make up your mind as to what work you have to take up that day and post the remainder of the work yourself, would not that be satisfactory ?

A. Quite so, but generally the difficulty arises where one has too much work.

Mr. Justice Stuart.—*Q.* I quite agree with you on that point, and it is just possible that you may get some day a temporary staff to clear the arrears, but when we have done that we want to know how to keep the file clear. Do you not think that it is a great waste of energy and labour to keep a judicial officer to perform the functions of a head clerk ?

A. It is true.

Q. But of course you must postulate that the man you put in as a supervising officer is responsible and conscientious and that he is a man who has some knowledge of law and who will be fit to take his position on the bench later.

A. If a man has no chance of becoming a judicial officer there is no good of relying upon him.

Q. Whether he is originally graded as a district munsif or not, the suggestion will be left to the local Government to consider, but your view is that he must be a man of some judicial capacity and that he must be a superior man ?

A. Quite so.

Q. In that case he could be made to dispose of all the uncontested work ?

A. Yes.

Q. Reserving for the munsifs nothing but contested work ?

A. You mean such an officer may be attached to the district court.

Q. That is a matter of detail and I do not want to go into details. It would be worked out separately for each particular province and for each particular judgeship, and it may not be possible to introduce this system everywhere. I am putting it forward for adoption in places where there is enough contested work and enough office work to employ usefully a man who has taken the LL.B. degree on a reasonable salary, to relieve the courts and let them get down to their real work, namely, the decision of contested work.

Sir T. Desikachari.—So far as I understand there is a lot of arrears to be cleared at Nellore ?

A. Yes. If there be no institutions the work will....

Q. Take the institutions also.

A. Then the arrears will always continue.

Q. A judge would be wanted for at least two years to clear off the arrears ?

A. Yes.

Mr. Sastri.—*Q.* You were in the Ramnad sub-court. What was the oldest suit ? How many suits, 5 or 6 years old, did you find there ?

A. In one case Mr. Krishnaswami Rao was the appellate judge; I think that case took 6 years or so for its trial.

Mr. Justice Stuart.—*Q.* At any rate your view is that considerable improvement will be done by division of labour ?

A. Yes.

Q. If we appoint a bench of two experienced and competent subordinate judges specially selected for the purpose, and if they sit together to hear appeals under Rs. 1,000, how many appeals, do you think, they would decide in a day on an average ?

A. It all depends upon the district. 3 or 4 appeals will be disposed of in a day. If the appeals are easy, then 6 may be disposed of.

Q. Taking one district after another, do you think that it will be 3 in some, 4 in others, 5 in others up to as many as 8 ?

A. The districts where 8 cases can be disposed of will be very few.

Chairman.—*Q.* Taking those that collapse, do you think that the tribunal can do on the whole five a day ?

A. Yes.

Mr. Justice Stuart.—*Q.* You consider that there is no objection to the following suits being decided under the small cause court procedure—suits in ejectment based on registered leases, suits for rent based on written contracts, suits for mesne profits when there is no title in dispute, and suits for arrears of maintenance based on registered documents. You think that suits of that kind are not sufficiently complicated as to justify lengthy procedure and that they can be tried under the summary procedure.

A. Yes.

Sir T. Desikachari.—*Q.* With regard to suits on simple mortgage, if they are of less than Rs. 500, can they be tried under the small cause jurisdiction ?

A. Yes, if there is no question of title involved in it.

Q. You can qualify it by saying that if there is a plea of discharge it can be tried under the summary procedure. Supposing there is a subsequent or prior mortgage and they intervene and want to have an account, won't it introduce complications?

A. These are always complicated.

Q. Would you like to have them tried under the small cause court procedure when there is only a plea of discharge ?

A. Yes.

Q. Directly any other plea is put in you would transfer it to the original side.

A. It is rather a difficult thing.

Q. With regard to suits relating to mesne profits how is it possible to ascertain whether it does or does not raise a question of title ?

A. If it raises, it must be transferred under section 23.

Q. You have qualified your statements in that manner.

A. Yes.

Dr. DeSouza.—*Q.* We have all been very greatly impressed by the evidence given by you and other witnesses that the district and the subordinate judiciary in this province are very hard worked. You must not think I am rather callous. We have heard the same tale from other provinces where we have taken evidence. In this province, I find however that your working days are about 200 to 220.

A. Yes.

Q. In other provinces I find that their working days are as many as 245 to 250.

A. Here district munsifs have to work like that.

Q. That is due, I believe, to the fact that the vacation of the district munsifs is only 6 weeks in addition to the other holidays.

A. Yes.

Q. That of subordinate judges and district judges is 9 weeks.

A. Yes.

Q. Would you be surprised to hear that in every other province that we have so far visited the district judges as well as munsifs get no more than a month and out of that one month the district judges have to spend about a fortnight to do criminal work and that they can only get away for a fortnight ?

A. That is rather hard.

Q. Of course you have knowledge of the climatic conditions of India, I take it.

A. Yes.

Q. Is there any reason why Madras should get more vacation than other provinces ? Why should the Madras judiciary get 30 days more than that of the United Provinces or Bengal ?

A. I do not know the figures of the other provinces and I cannot compare them with the figures of this province.

Q. There the working days are 245 in the year compared with 220 in Madras.

A. I consider the number of working days here has also been increased after the report of the Retrenchment Committee. Here the judges sometimes have to work till seven or eight o'clock in the night.

Q. Are the climatic conditions here so bad as to make it necessary that the Madras people should get more vacation ? If the same period of vacation were allowed in this province are you aware that it would mean the strengthening of your permanent cadre by the addition of three district judges, six subordinate judges and twelve munsifs ?

A. The judiciary is very much over-worked here and the two months vacation that is allowed is not sufficient for them to keep good health. There have been many breaks-down here.

Sir T. Desikachari.—*Q.* Would you like to give exclusive jurisdiction to village courts ?

A. They may be given exclusive jurisdiction but the district munsifs should exercise control over them and should supervise them very carefully. In the matter of making appointments of benches of village courts, both the collector and the district judge should select men.

Q. How much jurisdiction would you give to these courts ?

A. If he is a single judge, then the jurisdiction should be Rs. 50, but if it is a bench then the jurisdiction may be Rs. 100.

Q. So you think that if selection is made by the district judge in consultation with the collector, it will be a very satisfactory arrangement and that these benches or courts can be entrusted with the disposal of petty judicial cases ?

A. Yes.

Q. And that the district munsif will have the right of revision ?

A. Yes.

Dr. S. SWAMINATHAN, Vakil, High Court, Madras.

Written statement.

1. A. (i) *High Courts.*

Original suits—	
(*a*) Commercial	3 months.
(*b*) Others	6 ,,
First appeals	12 ,,
Second appeals	6 ,,
Miscellaneous appeals	6 ,,

(ii) *District and subordinate courts.*

Original Suits—	
(*a*) Title	12 months.
(*b*) Money	6 ,,
Regular appeals	4 ,,
Civil miscellaneous appeals against orders	3 ,,
Small Causes	3 ,,

(iii) *District munsif's courts.*

Original suits—	
(*a*) Title	8 months.
(*b*) Money	4 ,,
(*c*) Rent	4 ,,
(*d*) Others	4 ,,
Small Causes	2 ,,
B. Claim proceedings, etc.	2 ,,
C. Suits in the Presidency Small Cause Courts	3 ,,
Suits in the city civil court, Madras	6 ,,
Execution proceedings in these courts	6 weeks.

2. Yes.

Main causes of delay.

High Court.—Insisting on translation and printing in every case—indiscriminate granting of adjournments for the mere asking—constant change in sittings and in the constitution of benches—uncertainty as to when a particular case will be heard. According to the present practice parties and pleaders are trained in the unalterable belief that a case will never be heard and decided on the date fixed in the summons or notice. In the High Court on the appellate side printing is being insisted on in every case. Very often papers are printed not because they will be useful at the hearing of the case but merely to put off the evil day —the date of final adjudication. A good many second appeals, miscellaneous appeals and civil revision petitions could easily be disposed of with the typed copy of the judgment or order of the lower courts and the original records of the

evidence. This is all the easier when nearly half the strength of the judicial bench is composed of Indians who have practised at the Bar and who have a competent knowledge of the vernaculars. The judges who have attained their position after having been district judges will not ordinarily feel the want of printing a great drawback. I would limit printing in the High Court to heavy first appeals and to such other matters in which the registrar on the application of the parties, orders printing before being posted for hearing.

The practitioner at present is naturally anxious to prolong the life of civil appellate matters, because the parties knowing the dilatory ways of the High Court do not bring the whole of the funds required when they engage their pleaders and the major portion of what the litigant gathers in the first instance is devoted to paying the translation and printing deposits. If these charges which act as a drain on the resources of the litigant can be reduced to a minimum and that only where necessary, it may be possible to educate the litigant gradually into a belief that he will not get an indefinite number of adjournments merely for the asking.

After a case is ready for hearing a good deal of delay occurs because parties or their pleaders imagine their cases will have better chances of success before a particular judge or before a particular bench, and all manner of dodges are resorted to get the case taken off the list when posted before other judges or other benches. If some system could be devised under which when a case gets ready it is assigned by the registrar to a particular judge or a particular bench, a very serious temptation to prolong the pendency of a case could be removed. At present, second appeals are assigned to a particular judge to decide whether notice should go to the respondent or not. It would be quite easy to assign that second appeal for all purposes to that particular judge unless he desires that it should be heard by him sitting with another judge forming a division bench. As far as possible the same judge or judges might continue to sit for the disposal of a particular class of work, say for a whole term and thus remove all temptations for causing delay with a view to get a better bench.

Courts subordinate to the High Court.

These special causes of delay set forth above as applying to the High Court do not ordinarily operate in civil courts subordinate to the High Court. The main causes of delay in the civil courts subordinate to the High Court are :—

Laxity as regards posting—posting too many cases a day—sending away witnesses obeying a *subpœna* without recording their evidence—treating orders X, XI and XII as mere dead letters—unsatisfactory nature of rules relating to process service. There is great laxity in posting and re-posting of cases and no adequate check that cases posted for any particular week could reasonably be heard in the course of that week making due allowance for adjournments necessitated by death of parties, absence of material witnesses, etc., particular care should also be taken that a witness appearing in obedience to a *subpœna* is not sent away without his evidence being recorded unless the party that got him summoned states in writing that his evidence is not required.

The most important factor is however the personality of the presiding judge which is necessarily beyond the scope of all rules. The Bar as a whole can never rise to a higher level of excellence than is ordinarily attained by the presiding judge. Instances are numerous where the tone of the Bar shows signs of marked deterioration when, on a change in the personnel of the presiding judge, the new judge's habits were found to be dilatory and perplexed ; but the moment he is succeeded by a more prompt and strict officer with a fair measure of business habits the Bar as a whole rapidly recovers its lost vigour. A judge who is ever hesitating and listens to sense and nonsense with equal patience has his cases protracted to an undue length. Hence, officers found incompetent for administrative and executive duties ought not to be regarded as fit to occupy the judicial bench. As indicated in answer to question No. 4, officers in the administrative line ought to be given

an opportunity quite early in their career to elect the judicial line and the present practice of shunting them on as district judges because they are found unfit for any other class of work the executive Government considers more vital, ought to be abandoned wherever it still exists.

Delay in the subordinate courts, where it cannot be attributed to lack of training in the presiding judge, has to be attributed to lack of close and adequate supervision by superior authorities. This in the very nature of things can hardly be expected from a gentleman found unsatisfactory in the ordinary task of gathering the public revenue from the ryots of the district.

Another fruitful cause of protracted proceedings is the ignorance of the mode of working Orders X, XI and XII of the first schedule of the Code. If these salutary provisions are properly utilised a good deal of time in a protracted trial could be saved.

Again, the provisions of Order I, rule 8, are not properly used, *e.g.*, in suits relating to tarwad property in Malabar all the members of the family, including infants in arms, are added as parties.

A good deal of delay may be avoided if rules regarding service of summons and notices are made more reasonable, for example—(1) service on pleaders where one has been retained, (2) service by registered post where the chances of abuse are very little and (3) effective service in suitable cases through the agency of the plaintiff or his agent coupled with a proper affidavit of service.

3. So far as this Province is concerned we have enough courts and the number of judicial officers is sufficient; but greater forethought and care ought to be bestowed in selecting proper persons to fill existing offices, always remembering that in every other country the judicial office is a highly honoured office. No one should be appointed to it except those that have the capacity to discharge the duties appertaining thereto, satisfactorily.

A system of circuit or itinerant courts might be devised for speedy disposal on the spot of boundary disputes, small partition suits, suits involving compensation for improvements, disturbance of easements, etc. If evidence is recorded on the spot or near the property in dispute the temptation for exaggeration and perjury will vanish. These itinerant courts might act as auxiliary to the ordinary courts trying other issues. These itinerating courts might do a good deal of work now done by commissioners under Order XXVI and thus save considerable time.

4. As regards district munsifs the present system of recruitment in this province is fairly satisfactory. It is capable of improvement in only one direction. Men who have entered the clerical service in the district courts, subordinate courts or in the High Court should not be appointed munsifs even though they be graduates in law. On the other hand members of the Indian Civil Service, executive branch say from 5 to 10 years' standing, if they express their willingness to elect the judicial branch, should be first appointed as munsifs and the present practice of appointing such persons as acting district judges straight from the executive line being discontinued as early as possible.

As regards subordinate judges and district judges one half of such appointments must be filled up directly from the practising Bar and the other half by promotion from the ranks of district munsifs and subordinate judges respectively.

As regards the High Court, two-thirds of the appointments should be reserved for direct recruitment from the practising Bar (irrespective of such anachronisms as to whether you call a practitioner a vakil, barrister or advocate), and the remaining one-third by selection from the ranks of the district judges quite irrespective of seniority or standing.

5. No special training is required for recruits from the Bar. Selected officers from the executive branch of the Civil Service ought to be given special training by being attached to the courts of subordinate judges for a period of one year. While undergoing training they should be empowered to deal with small cause work and execution applications.

6. In this province transfer of judicial officers, in my opinion, does not in any way appreciably tend to prolong the duration of civil proceedings.

7. Six hours spent on the judicial bench, preferably 7 A.M. to 11 A.M. and 3 to 5 P.M. in all cases where it is practicable. The change of hours if it could be effected would be welcomed by most Indians and the quantity of work turned out between 7 and 11 A.M. would exceed that done during the whole day under present circumstances. Statistical returns of work are no doubt a necessary evil. They may become more useful if the district judges have the necessary equipment to scrutinise them. At present the impression is widely prevalent that these returns if scrutinised at all, are checked only by a ministerial officer of the district court and that there are few district judges who are thoroughly cognisant with the details of these returns. No better standard can be prescribed except the numerical. An index number for each court might easily be devised by striking an average between work turned out when the court was presided over by a particularly able man and by one of indifferent qualifications in recent years. This presupposes an efficiency audit of each individual member of the judiciary which is revised at least once in three years.

8. There is a great tendency amongst munsifs to be popular with the profession and this desire leads to indiscriminate adjournments to suit the supposed convenience of pleaders. There is no justification whatever for the concentration of several civil courts in one station. Each court should be located so as to be least inconvenient to the witnesses and parties. The state of affairs in large towns like Madura, Tanjore, etc., shows that the only voice that is heard is that of the vakils. Several instances are known where small farmers have practically lost the major portion of the fruits of their labour because their rich neighbour happened to have a litigation and just at the time of harvest the unfortunate ryot was summoned to the district head-quarters to give evidence and detained there for a number of days while his crops perish d for want of attention. The tendency to concentrate too many courts in one station if properly checked is bound to re-act and have a beneficent effect on the tendency to concentrate in any one practitioner more work than he could possibly attend to.

9. The experiment that has been tried of appointing special courts of small causes in Trichinopoly, Tanjore and Kumbakonam, was not a success as the small litigant and his witnesses had to travel a long way from home. I am not in favour of any change in jurisdiction. The courts created by Madras Act I of 1889, recently amended by Madras Act II of 1920, are really an index to the limit to which conditions in this province at present admit of change in the jurisdiction. The Legislature was wise in allowing the litigant an option whether he would prefer an ordinary court constituted under the Madras Civil Courts Act or the panchayat court. In spite of the delay, the small litigant still shows his preference to the ordinary civil courts created by the Madras Civil Courts Act, 1878. Until the *panchayats* have worked for some time and earned the confidence of the villagers, it would be unwise to make any attempt to convert the present concurrent jurisdiction into exclusive jurisdiction.

10. I am decidedly in favour of enhancing the jurisdiction of munsifs in original suits to Rs. 4,000 or even Rs. 5,000 and in small causes to Rs. 500.

11. I am against giving enhanced jurisdiction to selected district munsifs.

12. Very few heavy original suits are now tried by district judges. In heavy districts, like Tanjore and Tinnevelly, assistant sessions judges now relieve the district and sessions judges of the task of trying the less important of the criminal cases committed to them. The district judges, if they are persons appointed straight to that office from the grade of sub-collectors, will find themselves completely at sea in checking the work of district munsifs and subordinate judges. I have no proposal to make on this question and if the present system of appointing district judges is altered and a district judge is an officer who either from his professional life and knowledge or from the fact that he has risen to his present office from the ranks of district munsifs and subordinate judges will have the necessary equipment,

he will be able to find time to do all that is expected of him. If pressure of work is ever pleaded as an excuse, it must be understood in the sense of want of necessary equipment and legal training. The sub-collector—district judge does his sessions work admirably as compared with the subordinate-judge—district judge, but his civil work and administrative control over civil courts suffers owing to lack of experience and knowledge.

13. The proposal would be quite acceptable to the public of this province. All officers may be invested with such power. There is nothing peculiar and intricate in testamentary jurisdiction or succession certificate or land acquisition proceedings which the youngest recruit to the office of district munsif cannot handle as satisfactorily as an acting district judge just appointed to that office from the grade of sub-collector.

14. Part of this question I have answered in dealing with question 9. Most villages of any importance are divided into factions. Great skill is required in the constitution of the panchayats. Time is required to create confidence in these tribunals and until the public manifest some measure of confidence there is no use resorting to compulsion. Suits will be overvalued to evade any such law. Village courts have not been very popular. Panchayats are still in their infancy and my information regarding their working is of a varied character. I would not recommend exclusive jurisdiction being conferred upon them for some time to come.

15. I have no desire to restrict the scope of section 19 of the Presidency Small Cause Courts Act. Even in simple mortgage suits, so long as the provisions of Order XXXIV, rule 1, remain, questions of the genuineness or validity of an alleged prior mortgage may be set up giving rise to complicated issues. I would however put provincial small cause courts on the same footing as the presidency small cause courts and thus enable a provincial small cause court judge to try a suit for rent in respect of land or a suit in respect of *mahar* due to a Muhammadan wife or widow.

Suits relating to partnerships very often raise issues of a complicated character and I am afraid nothing has to be gained by making partnership suits triable as small causes. In practice very little depends upon whether the partnership has small capital or large capital. It depends upon the turn-over. I have known two partners with a capital of Rs. 5,000 doing twenty-seven lakhs worth of work in constructing the East Coast Railway line.

16. In this province Order XXXVII is applicable to all civil courts and summary procedure, limited to suits on negotiable instruments, has worked well. I would welcome rules being framed by the rule-making authority, with the advice of the Rule Committee, as contemplated by section 128(2) (*f*), extending the same procedure to suits for recovery of debts or liquidated demands arising out of contract, *e.g.*, suits for rent, suits to recover money on hypothecation bonds, suits to recover wages, etc.

17. In this province sub-registrars were tried as magistrates under the Code of Criminal Procedure. The experiment was not a success. I would deprecate officers appointed to discharge a particular duty being saddled with additional responsibilities of a judicial nature. A sub-registrar should be assigned sufficient registering work. I have no objection to invest retired officers, willing to do honorary work, being invested with powers as special munsifs on the analogy of special magistrates under the Code of Criminal Procedure. In large towns special benches of honorary munsifs could easily be constituted. I am decidedly against the employment of sub-registrars.

18. I would also delete clauses (*q*), (*r*) and (*s*) from Order XLIII, rule 1, Code of Civil Procedure, though I am aware that all attempts at curtailing the rights of appeal will have no practical effect so long as the scope of section 115 remains in the present state of bewildering uncertainty.

In all prior-to-decree appeals and revision cases it should be distinctly understood that the provisions of Order XLI, rule 13(2), Code of Civil Procedure, are not applied and where proceedings have been stayed the appellate court or High

Court should take care that the appeal or revision case is specially marked for early disposal, without printing, as soon as the respondent has been served.

19. (*a*) Except in cases covered by section 98(2) I would abolish all appeals under clause 15 of the Letters Patent in every case decided by a single judge exercising the appellate jurisdiction of the High Court unless such judge on application made to him at the time that he pronounces his judgment or order has certified the case to be a fit one for appeal.

(*b*) Under the amended Letters Patent of the Madras High Court no Letters Patent appeal is allowed in revision cases and if the value of the Rs. 1,000 is limited to such value in money decrees, my answer to question 18 would apply. But as regards decrees involving title to immovable property though the value be less than Rs. 1,000 I would not place any further restrictions than that implied in my answer to question 19 (*a*).

20. I am not prepared to say, in spite of the fact that only a small proportion of second appeals in the High Court are successful, that the unsuccessful ones are necessarily frivolous. The existence of the right of second appeal is in itself a very potent factor making up for the efficiency of lower appellate courts.

I would extend the scope of section 102, Code of Civil Procedure, by substituting Rs. 1,000 for Rs. 500 and also the scope of suits triable as small causes in the manner suggested in the answer to question 15. It would not do to choke off second appeals relating to title whatever be the value of the second appeal.

21. I would not place any further restrictions on the right of second appeal against money decrees than that indicated in my answer to question 20. So long as the decree-holder retains the liberty to execute his money-decree (appellate courts do not ordinarily grant orders for stay of such decrees) I would not compel deposit of the decretal amount. Several of these second appeals involve substantial questions of law and the litigant who fancies he has grievance ought not to be frightened in the manner proposed.

22. As regards second appeals, in the High Court the power is systematically exercised. Mofussil appellate courts seldom make use of this provision and they are right, as appeals are ordinarily on questions of fact which can be satisfactorily disposed of only on a perusal of the records. I have known only two district judges who have exercised the power under Order XLI, rule 11 and both of these officers had held the office of registrar of the High Court and as such were accustomed to mark second appeals as fit to be heard under Order XLI, rule 11.

23. I am not prepared to say the right is abused. I am strongly opposed to make a legal right practically available or not, according to the wealth of the party concerned. Since the right of revision under section 25 of the Provincial Small Cause Courts Act has to be grounded on questions of law I would not throw any further difficulties in the way of the litigant by making the High Court practically inaccessible to him. As regards section 115, Code of Civil Procedure, the uncertainty is always there according to the personal predilections of each individual judge. The art of giving legal advice in such matters is almost dead owing to the personal equation involved.

I would not introduce any further limitations than what is indicated in the last paragraph of my answer to question 18.

24. (1) Fixing the date for first hearing.

I would give the parties sufficiently long time to prepare and then refuse adjournments except for good cause to be stated in writing. Treat the plaintiff as always ready. Give the defendant in a small cause suit about 4 weeks time from date of service and in an ordinary suit about 2 months time from date of issues.

(2) Where witnesses have been summoned, never grant an adjournment on the ground that the pleader is otherwise engaged or to suit his personal convenience.

(3) When a trial first commences it must proceed from day to day just like the trial of a criminal case by the Court of Sessions. When evidence has been adduced never grant an adjournment for the pleaders to prepare for arguments.

(4) Encourage as far as possible the use of interrogatories, admission of facts and admission of documents under Order XII, rule 12, Code of Civil Procedure so as to dispense with their proof.

(5) The court should also make better use of Order X.

(6) When processes are applied for witnesses, hand over the *subpœna* to the parties themselves and make each party responsible for the attendance of his own witnesses, and in taxing costs between party and party see that the subsistence allowance for a witness is limited to days on which the examination actually takes place and see that not more than one travelling allowance to and fro is allowed for each witness.

25. A serious attempt ought to be made in suitable cases to effect service by registered post and in other cases to get an affidavit of service (personal or by affixture) made by the plaintiff or his agent and vouched for by the village headman or village accountant. The procedure of section 106, Transfer of Property Act might be applied to a good many civil suits.

26. Except that the statements are somewhat vague and prolix, plaints that are usually in the vernacular answer their purpose very well. I would not insist that pleadings should be in English or should be in a particular form. I would encourage the use of the vernacular as far as possible. Any deficiency in the pleadings can easily be made good by the proper use of Order X prior to issues being framed.

27. In this province I do not think they are neglected.

28. I would answer the first part in the affirmative. (*Vide* answer to question 25.) The agency of village officers can be used, but I would insist that they be paid a small remuneration, say 4 annas for each summons or notice served with their help. The party may be encouraged to effect service with the help of village officers and the cost will be no more than what he incurs now. An affidavit of service made by the party or his agent supported by a certificate from a responsible village officer would be even more satisfactory than the present method.

29. This would be useful in appeals, the party having already given an address for service in the court of first instance. On the recommendation of the Rule Committee, the Madras High Court has made such a rule, *vide* Order XLI A., rules 4 and 5. It is desirable to extend the practice to execution proceedings in general, especially as the form of vakalat prescribed by the High Court empowers a pleader to continue his representation to proceedings in execution.

30. This suggestion is generally acted upon, as the process-server, unless he is colluding with the opposite party, expects a free meal and sometimes a small present also in cash from the party on whose behalf he takes out a process for service. No improvement can be expected by merely regularising the present practice.

31. In this province complaints about the framing of issues are very rare. In complicated suits the pleader on each side frames his own issues and the court settles the issues by striking out such of them as are redundant after a perusal of the draft issues.

32. Speaking generally, these provisions are woefully neglected. They were not so prominent in the 1882 Code and the mofussil Bar has not taken to these provisions very kindly as the proper use of these provisions implies a certain measure of forethought and previous preparation, generally lacking in the ordinary litigant and his legal adviser. Presiding judges can do a good deal to prevent these provisions falling into desuetude and a strongly worded circular from the High Court might probably energise the average district munsif and his Bar.

33. Speaking generally when the points at issue are simple an examination of the parties at the first hearing of the case and before issues are actually framed would be useful, provided they are further examined, where necessary, after the issues are set down for trial. I would agree to the suggestion in the latter part of the question.

34. This provision is often neglected with the result that costs are allowed to mount up unnecessarily, not to speak of the delay. There is no harm in making a party responsible for the appearance of his own witnesses (not being a witness in his official capacity) who is not friendly to him. There is however an absurd notion very prevalent in this province of a witness being discredited, if he appears without a summons. Judicial officers could do a good deal by discouraging such silly questions in cross-examinations. Costs might be taxed as between party and party in respect of all witnesses actually examined, no matter whether they appeared on summons or not.

35. It depends mainly on the presiding officer of each court. If he has read the pleadings and the issues before commencing to hear evidence and if he intelligently follows the evidence, he can do a good deal to keep the pleader to the straight path. It is very rarely the Bar is too strong for the Bench. Where the presiding officer is weak and patiently records every answer elicited whether relevant or irrelevant and receives documents, reserving for a future occasion the determination of the question whether they are admissible or not, nothing can save the case from being prolonged to an undue length. The evil lies not in citing a large number of witnesses but in allowing all of them to be examined.

36. I would not recommend the adoption of affidavit evidence to the extent suggested. But the witness who puts in an affidavit might be tendered for cross-examination and this might shorten proceedings to some extent.

37. The administration of justice ought not to be made to look mechanical. An efficient judiciary is not likely to require any such artificial aid to shorten proceedings.

38. Already answered. *Vide* answer to question 16.

39. I would urge the principle of representative suits being extended to the particular instances mentioned in the question, provided, that in the case of co-owners, in addition to general publication the court takes care to give a registered notice of the institution of the suit to each co-owner where their number is not prohibitive or otherwise takes care to see that the publication is really effective.

40. I do not think this suggestion is practicable or that it is desirable on a balance of convenience, especially as the time for bringing on record a legal representative is very much cut down by recent legislation. If a rule as contemplated is to be made at all, its operation should be confined to cases of transfer of interest by assignment or devolution under Order XXII, rule 10, Code of Civil Procedure.

41. I do not think that there is any vexatious refusal on the part of near relations to act as *guardians ad litem*. In the majority of cases the proposed guardian readily consents. The remedy suggested might, however, apply when the first named guardian has refused and a second application has to be made.

42. No further safeguards are required than what are provided in section 95, Code of Civil Procedure. Abuses there are.

43. The great majority of judgments are not unduly prolix. We must leave the matter to the good sense of the judicial officer concerned.

44. Generally there are.

45. I believe the dates of adjourned hearing are fixed by the judges themselves in consultation with the pleaders, having due regard to the state of current business of the court and the state of preparation of the parties asking for adjournment; but dates of first hearing after issues are not so fixed and every litigant rightly or wrongly is under the belief that his suit (even it be a small cause) will never be heard on the date fixed for hearing. I would not urge any new rule in the matter except that cases should be so posted that the entire work, say for a whole week, is reasonably capable of being completed within the time allotted, and as far as possible cases are proceeded with from day to day until they are finished and in the order in which they stand posted.

46. Pleaders are consulted, but sometimes pleaders themselves are unable to frame a fairly reliable estimate as to time, at all events until the hearing has made some progress. Usually a large number of witnesses are cited but the process of weeding out commences only after the more important of the witnesses have been examined. I do not expect much to be gained by making new rules on the subject

47. Provisions of Order XXVI are not resorted to by litigants anxious to prolong a case. Rule 62 of the Civil Rules of Practice 1905 is a sufficient deterrent.

48. The proposed remedy will be useles as the question of adjournments depends upon the degree of softness of the presiding officer. Once the Bar knows that a judge is strict the tendency to apply for adjournments would disappear. If it is possible to classify suits according as the party is rich or poor, then the fear of having to pay costs may possibly evoke some measure of diligence on the part of the poor litigant. But day costs are in no sense an adequate compensation to the party adversely affected by an adjournment or to his witnesses. In the majority of cases it will never reach the pockets of the party, and it is no compensation to the witness for his loss of time and trouble.

It is often considered that the readiness to grant an adjournment for cause or no cause is the true measure of a judicial officer's popularity. More frequent supervision by the district judge and by one of the Judges of the High Court might act as a corrective.

49. Excepting heavy original suits tried by subordinate judges, the majority of suits are not tried continuously from day to day and instances are not wanting of a district munsif in the course of one day recording oral evidence in half a dozen different suits and adjourning each of them for distant hearing dates. There is no system in the posting of cases, no real effort to see that the cases posted for any particular week are reasonably likely to be heard within that week. The only remedy is for the judge to post a reasonable number of cases for each week, making due allowance for adjournments, and insist upon the cases being taken up in the order in which they stand posted.

51. Perhaps in large towns like Madura, Tuticorin, Cocanada, or Calicut something like Order XV of the Original Side rules might work well, but for the great majority of civil courts in the province no such special list is yet needed. Such a differentiation might possibly prejudice other litigants.

52. (1) Where notice of the application to the judgment-debtor is required, serve it on the pleader who represented him in the suit or resort to service by registered post at the address for service to be given by the judgment-debtor at the time the decree is passed, if not earlier.

(2) Do not insist on the production of a certified copy of the decree sought to be executed along with the execution petition. If the original decree has been forwarded to the central record office the executing court could easily get it, in any event by the time notice is served on the judgment debtor.

(3) Shorton the period of limitation for execution. Let it be three years for decrees for delivery of immovable property and six years for movables in the place of twelve years specified in section 48, Code of Civil Procedure.

(4) Decree-holders who are dilatory may be penalised (i) by having to pay an extra stamp duty on applications made after the lapse of, say, 3 months from the date on which the decree becomes executable and (ii) by making dilatory applicants forfeit any claim for costs of execution.

(5) In Order XXI, rule 32, substitute 3 months for one year in sub-rules (3) and (4).

(6) In rule 31 of the same Order the period of six months in sub-rules (2) and (3) might be curtailed to 3 months.

If the committee would throw out a general suggestion that periods should be curtailed each High Court might make its own rules acting under Part X of Code of Civil Procedure.

(7) A decree-holder attaching another decree under the provisions of Order XXI, rule 53, must be expected to be as diligent in taking proceedings in execution, as the holder of the decree attached.

(8) Where by neglect or default of a decree-holder his execution petition has to be struck off or dismissed, penalise him by providing that the reliefs prayed for in that execution petition are no longer open to him in the execution of that decree.

53. May be extended.

54. May be invested.

55. If it be possible to modify section 47 so as to bring all disputes of the class referred to in 43 Madras 107 (F.B.) within the scope of that section, it would be good, though I must admit that the determination of questions under section 47 consume quite as much time as the trial of suits.

56. (*a*) I agree to the proposed curtailment.

(*b*) and (*c*) I am also in favour of these suggestions. I agree to the suggestion in the last part of the question; the present periods of limitation are unduly lon and harassing.

57. I see no objection to the proposed alteration.

58. I am entirely in favour of the suggested alteration.

59. I am against the deletion of the 2nd proviso to Order XXI, rule 16.

60. I have no objection to delete rule 21 altogether. I have no objection to a decree holder proceeding against person and property simultaneously or where he shows good cause, trying to execute simultaneously in different jurisdictions.

61. I am in favour of deleting altogether Order XXI, rule 22.

62. I would so modify rule 26 as to give the court to which a decree is transferred for execution discretion to grant stay for a limited time for sufficient cause, it being understood that what is sufficient cause in one jurisdiction need not be considered sufficient cause in another jurisdiction to which the same decree is transferred, *e.g.*, that goods of sufficient value have been attached and investigation of claim proceedings is pending may be good cause for staying the sale of immovable property situate in another jurisdiction, in execution of a money decree.

63. I would dispense with the extra notices referred to in this question whereever there is satisfactory proof that the first notice has been brought home to the judgment-debtor or the person then really interested in the property.

64. If the debtor has had sufficient notice that the decree amount is sought to be realised from a particular parcel of immovable property then there should be an end of all further duty on the part of the court or of the decree-holder to keep him informed of the successive steps until the actual confirmation of the sale. The debtor owes a duty to himself that his own interests are safeguarded. It may not always be practicable to insist on attachment and proclamation of sale being made simultaneously. In many cases all that a decree-holder is required to do is to proclaim the attachment.

I should very much like to see the relation between vakil and client put on a more permanent footing than is the case now. I agree to notice to the vakil being treated as sufficient notice to the client and a refusal of the notice by the vakil may be treated as a refusal by the former.

65. I cannot agree to village headmen and village accountants being saddled with responsibility as debtor-catchers. Most villages are factious and these village officers have enough work of their own when they are not leaders of a faction.

66. (*a*) This suggestion might be adopted provided registration charges for search are not prohibitive.

(*b*) There is no objection to this suggestion. The explanation to rule 1 of Order XXXIV, will have to be deleted and care must be taken that the record is not unnecessarily loaded with names of parties who have no longer any subsisting interest.

(*c*) There is no objection so long as the provision is merely permissive.

(*d*) A provision like this is necessary for the prevention of multiplicity of suits.

(*e*) In the great majority of cases the time that is granted to the mortgagor is never utilised. I would limit the time, say to one month which is the time usually taken to get a fair copy of the decree signed and sealed after judgment has been pronounced. The period of 6 months in Order XXXIV, rule 2 (*c*) ought to be curtailed.

In simple mortgage suits there is no necessity for a preliminary decree which is practically a meaningless formula. A final decree may be passed as if immovable property has been attached in execution of a money decree on a simple bond.

After the security has been exhausted a personal decree may be drawn up on application made in that behalf. I think that the present practice is better. A mortgagee ought to look to his security first before trying to harass his debtor by other means.

67. Yes ; but only a small percentage of decrees are appealed against.

Where a money decree sought to be executed is under appeal, I am in favour of the executing court being invested with power to take full security for restitution under section 144, Code of Civil Procedure, in the event of the appeal being successful in whole or in part, the appellate court merely granting a certificate that an appeal has been filed and is pending disposal. This would prevent applications for stay being made to the appellate court in the case of such decrees. Subject to answer to question 66 (*e*), in the case of final decrees for sale in mortgage suits, it is better that the executing court stays its hand until the appeal, if any, from preliminary decree has been heard and decided. Appellate courts must also strictly adhere to the practice of giving precedence to those appeals in which it has stayed execution of the decree of the first court. An order for stay is not made without notice to the respondent and if after hearing the respondent the appellate court makes an order for stay, the application can never be called frivolous even though the appeal be ultimately dismissed. Where the obtaining of an *ex-parte* order of interim stay pending return of notice to the respondent is found to be vexatious, the court should be empowered forthwith to hear the appeal and in the event of its being found unsubstantial it must have power to award reasonable compensation on principles similar to those embodied in section 95, Code of Civil Procedure.

68. I have never heard of abuse of the power referred to in this question leading to prolongation of execution proceedings. I have therefore no suggestions to make.

69. The law of insolvency, since its primary object is to see that all creditors are put on the same footing, necessarily impedes the path of a decree-holder creditor. There is no avoidable delay except what is necessarily inherent to the management and realisation of a man's estate by an official agency. As for fraudulent insolvency applicatons made with a view to delay creditors, nothing further can be done by way of fresh legislation.

70. A debtor prevents arrest by flying to foreign territory after hiding his movables. If a creditor does not know how to help himself in these matters he must be left without any remedy. The existing provisions of law are quite sufficient to help a diligent creditor.

72. In the case of a registered mortgage deed as between parties to the document, formal proof may be dispensed with and proof of consideration limited to

the same extent as is required in a suit on a promissory note or other negotiable instrument by throwing the onus on the defendant.

73. Even now parties by consent do treat printed records as evidence but I am afraid it would not be practicable to compel an unwilling litigant to give his consent except by penalising him by way of the costs of formal proof, irrespective of the event, if consent is withheld for improper reasons.

74. The Law of Limitation might be made more stringent by shortening the period for execution of decrees. If a decree-holder is so helpless that he is unable to realise the fruits of his decree within a period of 6 years from the time he is free to execute, he deserves no sympathy and the law should treat the decree as no longer subsisting.

76. I would agree.

77. I have not the slightest objection to compulsory registration in these cases.

78. I do not propose to interfere with the doctrine of part performance.

79. Having regard to the proposal to levy a uniform nominal fee for registration I do not see any objection to the proposal.

80. I expect to see illiteracy vanished from this country in the near future and so I am unable to support this suggestion.

81. I am afraid Indian human nature is not susceptible of such rapid transformation as the question presupposes. Legislation cannot be far in advance of social habits and customs.

82. Court fee has to be paid in advance, but the frivolous character of suits can be ascertained only at the end of the litigation. Court fees have to be levied only on the principle of fair remuneration for services to be rendered. It ought not to have any penal aspect in it.

83. The difference between mortgage deed and the other documents referred to in the question need not be retained.

84. This question is not answered as the prevention of champerty and maintenance is not in itself calculated to speed up judicial proceedings.

85. The provisions of Order XXVI are found sufficient for the requirements of this province.

86. Undoubtedly it has. To inculcate in the minds of the judiciary a proper respect for the Statute law of this country more especially to India Act XVIII of 1875. Nothing has so far tended to impair the prestige of the High Courts as the existence of the vast number of private legal periodicals more often reporting nonsense than sense. If the High Courts have any regard for their own prestige they should not allow the reporting of any judgment that has not passed muster by a careful scrutiny by the Council of Law Reporting.

87. There is no branch of law now administered in this province the codification of which is calculated to speed up legal proceedings. On the other hand there is nothing so fruitful of litigation as codification, *e.g.*, the large mase of litigation that followed the enactment of the Estates Land Act in 1908.

Dr. S. SWAMINATHAN, called and examined on Thursday, the 31st July 1924.

Chairman.—I understand you are a practitioner in this presidency and that you have been Principal of the Law College.

A. Yes. I am a practitioner and I have been Principal of the Law College.

Q. I understand you know something about legal and university education in other places.

A. Yes.

Q. We are very much obliged to you for the very careful and admirable note you have presented to us. I want to take up just one or two important points. I notice one point, *viz.*, that there is too much printing in the High Court in Madras.

A. Yes.

Q. Your idea is that first appeals or at any rate heavy first appeals might continue to be printed, but that in other cases there ought to be no general rule requiring printing. What is the practice in this High Court ? Are the judgments of the courts below in second appeals printed?

A. The munsifs' courts' judgments used to be printed 3 times over. It used to be first printed for the use of the district judge or subordinate judge in hearing the appeal. Then a second time it is printed with a view to file a second appeal in the High Court and a third time printed over again before the second appeal gets ready for hearing before the High Court.

Q. That seems to be somewhat unnecessary. Who bears the expenses of printing for the first appellate court ? I suppose it is the appellant in that court.

A. Yes.

Q. Enough copies are not then printed to serve for the future stages.

A. I may just explain in this way. I have been Secretary to the Rule Committee ever since the Code of 1908 came into force. Some years ago we recommended that in the first court when they do print, instead of printing 4 copies under the rules, let them print 24 copies so that there may be a sufficient number to go round in the event of a second appeal. But some judges reported that they had some trouble with their printers to get a uniform rate. That rule was in force for a short while. The result now is that when a munsif's judgment is appealed against it is printed provided it exceeds a certain length. Only long judgments are printed and only 4 copies are printed. That would not be sufficient. There will be no copies available for second appeal. Now, in the appellate court when they decide a case the party who desires to appeal makes an application. On his application the appellate court grants only printed copies.

Q. Do yon think there is any reason why on a second appeal, if the judgments of the two courts below are properly typewritten, they will not suffice ?

A. I should think it will be quite sufficient.

Q. Do you think it is necessary in all cases in second appeal to require anything more to be typewritten than the two judgments ?

A. Very often they require a good deal of documentary evidence.

Q. Sometimes, not very often, they may require the pleadings.

A. Very often we may require the pleadings.

Q. Now, in Calcutta only the two judgments are typewritten in second appeals. If either party wants to refer to the documents on record or to the pleadings it is open to him to have a couple of copies typed and hand them up to the judges for the purpose of being referred to or to request the judges, if it is practicable, to look at the record itself which is always there. Now practically nothing is typed apart from the two judgments. In Madras will a similar system work well ?

A. A good many of our documents are in the vernacular and if a party translates, the accuracy of the translation might be challenged on the other side. Provided that they can get the documents translated by a court interpreter, that will do.

Q. As regards translation, I take it that even if there is some question about the accuracy of the translation, the two pleaders on both sides and probably one or more of the judges could generally settle that without much difficulty.

A. I should think so. It is quite easy to have it settled.

Q. In some cases difficult documents, where there are questions of construction, might make it desirable to have the whole document translated and typed.

A. Yes.

Q. But, do you think that that happens very often ?

A. Not more than in one out of 10 cases or so.

Q. Now, what do you suggest if you are going to require more to be typed than the two judgments ? Would you leave it to the registrar to settle questions as to what documents are necessary to be printed ? To whom would you leave the decision as to how much is to be typed and what should be officially translated ?

A. I think it must be left to the pleader for the appellant what he requires to be typed ; and he must be made responsible to get these papers prepared and a copy exchanged with the pleader for the respondent.

Q. Printing in different parts of India is of a very different cost. In Madras I would rather think that printing is very cheap comparatively ?

A. Comparatively it is so.

Q. Would there be much saving to litigants if printing was dispensed with in second appeals and typewritten copies were permitted.

A. I think there will be a good deal of saving.

Q. When a document is printed for the purpose of second appeal, is it the practice first for a clerk in the High Court office to copy out the document from the record in order to send it to the printer ?

A. Yes. That is the practice.

Q. Do you think that is really necessary ? In the records there may be a number of copies of the documents already.

A. Yes. The parties should be able to supply. They obtain certified copies in the case of all English records.

Q. I understand that in the case of a second appeal when a document is to be printed, the first thing that happens is that some clerk starts copying out the whole record so far as it requires to be printed in order to send it on to the printer.

A. Yes. First it is translated and then the translator makes a clean copy for the press. In most of the second appeals it is very rarely that we have got documents in the English language.

Q. Would you tell me whether this question of printing in the High Court has been considered, so far as you know, lately ?

A. Yes. It has been very much considered. In fact during the last 16 years one half of the work of the Rule Committee has been in connection with this printing. Rules have been made, have been upset and again introduced.

Q. I mean that it is not a question that has been lost sight of ; that is to say, as to the present requirement of printing it is the considered opinion of the authorities that it should be maintained.

A. I should think so.

Q. Your view is that they have been too strict in requiring printing, at any rate in second appeals.

A. Yes.

Q. Apart from second appeals there are miscellaneous appeals and civil revision petitions.

A. Yes.

Q. In those cases, what do they print ?

A. The proceedings that led up to the order appealed against and the evidence.

Q. In fact the whole of the record so far as is relevant is printed and that is compulsory.

A. Yes.

Q. Now, these miscellaneous appeals are appeals from interlocutory orders.

A. A few of them may be interlocutory appeals. The majority of them would be appeals from orders in execution.

Q. In other words they are all appeals as to which expedition seems particularly desirable.

A. Yes.

Q. Now, do you think printing in this fashion delays the hearing ?

A. Yes, it delays the hearing a good deal.

Q. Now, would you tell me what the practice is with regard to printing in civil revision petitions ?

A. If it is against an interlocutory order then there is a rule in the High Court that the petitioner should produce his own certified copies. They do not generally call for the records from the courts below in a pending case unless there has been a stay of proceedings.

Q. Supposing somebody has made an order in the court below granting a commission or something of that sort and I want to take it in revision to the High Court, what should I do ?

A. I present a petition accompanied by a copy of the order which is sought to be revised by the High Court.

Q. Now, that comes before whom ?

A. Before a single Judge.

Q. Is that presented in court ? That is to say, does the barrister or pleader come before the court and move for a rule *nisi* ?

A. Very often what he wants is that the proceedings in the lower court should be hung up. That is his chief object, and he says that he is going to make an urgent application before a single Judge.

Q. What is meant by the presentation of the petition ? Does it mean that the petition is moved as a motion in open court before a single Judge ?

A. Yes.

Q. Suppose the Judge is of opinion that there is a *primâ facie* case, does he grant a rule ?

A. Yes he does.

Q. Very well, so far you have only got a written petition and a copy of the order attached ?

A. Accompanied by an application for stay of proceedings.

Q. Where does the printing come in—after the rule *nisi* is issued ?

A. After the rule *nisi* has been issued and notice has gone to the respondent.

Q. What happens then ?

A. Along with the original petition I also file a list showing what documents I want to be called for and printed. Then I pay for the process to the respondent and then the office makes out a bill for the printing. When the respondent puts in appearance he also files a similar list of the papers that he wants to get printed at his own expense.

Q. With all this, how much time does elapse between the rule *nisi* being issued and the final hearing ?

A. About eight or nine months.

Q. So that if the rule *nisi* is issued at all in interlocutory matters the case below will be hung up for 8 or 9 months ?

A. Yes.

Q. And you want that this sort of interruption should be disposed of within a short time ?

A. Yes within six weeks.

Q. In Calcutta there is no question of printing in revision matters either under section 115 of the Code or section 25 of the Small Cause Court Act. What about petitions under section 25 ?

A. Printing is done in the same way.

Q. Therefore if there is an application under section 25 the matter will be hung up for 8 or 9 months ?.

A. Yes.

Sir T. Desikachari.—Q. In such matters is there no delay on account of congestion of work ?

A. There may be some delay on account of congestion of work but usually the delay is due to printing. When a bill is prepared the man is given 25 days to pay and if he wants to delay the matter he may ask for extension of time ?

Chairman.—Q. What I gather is that the time taken up in printing in first appeals does not matter much, but when you come to miscellaneous appeals, execution orders, applications for revision of interlocutory orders or miscellaneous orders, these matters should be dealt with promptly whatever arrears there may be with regard to other matters. It is a matter that ought to be dealt with with special expedition ?

A. I mean to say that the time occupied in printing is responsible for the delay that is caused in these matters.

Dr. DeSouza.—Q. Do you mean to say that proceedings in the lower court are hung up because the printed record is not ready ?

A. The delay takes place in this way. If the petitioner is anxious to delay the proceedings he can apply for printing a large mass of papers and then cases are taken up according to a certain order in which they get ready. As they are taken up in order the man can apply in such a way that the case may not be taken up earlier.

Q. Would there be any objection in this province to the parties being allowed to do their own printing ? Are printing charges not levied by Government higher than the charges levied by the local press ?

A. Perhaps the Government rate is higher than the market rate, and I may point out that in the translation and printing branch there was an accumulation of something like 8 or 9 lakhs of rupees, but the provincial Government took it away. I think the accumulation was due to over-charging the parties.

Q. Do you not think that there should be some reduction in the rate asked for by the Government ?

A. The High Court here has recently revised the rates of printing and I do not think that it will admit of any further reduction.

Chairman.—Q. In Calcutta we had the same practice, but that was changed. The Calcutta High Court allowed the parties to do their own printing and that was much cheaper because the ordinary printer is often apt to allow them to pay by easy instalments whereas the High Court insists, practically speaking, on the money being deposited. Although that was cheaper, the difficulty was with regard to editing. Editing was horrible, the printing was bad, and proof reading did not exist at all, and so that practice had to be given up. There was no order at all, not even alphabetical order and so we were driven to make a change for these reasons.

A. Yes we have recently seen a sample of Calcutta printing.

Q. Are paper books here printed in first appeals in the Privy Council form ?

A. If the appeal is of considerable value then the paper book is printed in the Privy Council form. The Privy Council will not allow a portion of a document to be printed, but in the ordinary appeal the High Court allows a portion to be printed.

Q. Are you quite sure that the Privy Council does not allow a portion of a document to be printed ?

A. I have felt that difficulty in the last two or three years.

Q. Well leaving that question aside the Privy Council has very good rules as to the way in which the paper book should be compiled—I am not speaking of the size of the paper book. What I want to find out is whether you have two different systems in this court according as the case is above Rs. 10,000 or below Rs. 10,000 ?

A. The Privy Council mode of printing is more costly than the ordinary High Court. To mention only one instance, I had yesterday a bill of Rs. 800 for an appeal, but the man was poor and I had to make an application and then I got it printed in the ordinary way and the bill came down to Rs. 85 only.

Q. That amount must be due to the kind of paper, form of the book, and kind of the type ?

A. But in addition we have got different rates for translation.

Q. I am not suggesting that small first appeals should be treated as though they were going to the Privy Council, but I am only concerned with the way in which the paper book is compiled and the order in which documents are put before the court. So far as editing is concerned, do you not think that the same principle should be applied to both ?

A. I agree, as a matter of fact we are following the same principle.

Q. Now, when a first appeal paper book is printed are any steps taken to secure that the mass of unnecessary formal matter is not printed ?

A. At present there is absolutely no check.

Q. That is to say, the appellant's vakil puts in a list and the respondent's vakil afterwards adds to that list, what he wants, and there is no body to say " Look here, this is ridiculous and need not be printed at all."

A. Yes.

Q. I suppose you are aware that the Privy Council has laid down very strongly that it should be the business of the registrar in the Privy Council cases to check the quantity of the matter. You remember there was a case before the Privy Council from the Lahore High Court a few months ago. The Privy Council refused to look at it until 150 or 250 pages were torn out from the book and it was rebound. The other day I saw a similar case in the papers. Is anything by way of check done ?

A. Nothing of the sort.

Mr. Radhakrishnaiya.—*Q.* To whom would you delegate these functions ? The registrar knows nothing as to which document is relevant and which is not and therefore he cannot be in a position to check.

Chairman.—*Q.* The Privy Council makes the registrar responsible for this checking. He can call the parties and can say " Why do you want this document which is not at all necessary " and so he can question the other party in the same way and thus can avoid unnecessary printing.

A. With reference to Mr. Radhakrishnaiya's question I may explain that the practice at present is this. A pleader files a first appeal from the decision of a subordinate judge and he hands over the papers to his clerk to copy out the documents and that clerk puts in copies of all the documents without seeing what is necessary.

Q. That is what happens in every court. The litigants have to bear tremendous expenses in printing the documents and the vakils, instead of seeing to it themselves, give the file to their clerks and in this way practically whole of the record is printed.

A. Yes.

Q. The person who is in charge of the preparation of the first appeal paper book is generally a junior vakil and the man who has to argue the case ultimately has nothing to do with this sort of work ?

A. Sometimes it is so.

Q. In practice do you find that the paper book in the first appeal contains a large quantity of matter which is never referred to in the course of arguments ?

A. I should say that 50 per cent. of the printed matter is such as is never referred to during the arguments.

Q. That is a great burden upon the litigants, and I think every effort should be made to remedy this ?

A. Yes.

Mr. Sastri.—*Q.* I think the Judge has power to make the party bear the cost of pr nting which is unnecessary.

A. Yes.

Q. Is that ever done ?

A. I know of a few instances in which the cost of printing has been disallowed to the successful party.

Q. Is the party who loses required to pay 50 per cent. in addition to the necessary charges he has to pay for printing ?

A. Yes, but I don't think this can be done in many cases. The paper book is sometimes of 500 pages and it is very difficult to ascertain how much of the printing expenses the respondent has to bear.

Q. But the applications will show which document was printed and at whose instance it was printed.

No answer.

Chairman.—*Q.* Now would you tell me one thing before we get on to another point. Supposing a vakil does his duty and keeps down the printing to what he considers to be necessary, takes the responsibility to cut down the printing in a reasonable way, and it turns out that some document on the record, which has not been printed, is a document which he desires to refer to by reason of arguments on the other side; is there any difficulty in getting the court to allow him to refer to the document which is not printed ?

A. There is absolutely no difficulty and very often a typed copy of the document to be referred to is handed over to the Judge.

Q. The court does not insist on the party, when he chooses what is to be printed, making up his mind to dispense for ever with everything else ?

A. Yes.

Mr. V. Radhakrishnaiya.—*Q.* The Judge refuses to look into anything which is not printed ?

A. Very very rarely.

Q. There are some such instances ?

A. There were some, but I would not say that that is really the case now.

Chairman.—*Q.* Would you tell me whether there is any rule of the High Court to the effect that you cannot refer to anything unless it is printed ?

A. I know that there is a rule that if you have not got a document translated and if the court translator is required in the open court to translate it you will be charged a fee, but that fee is never insisted upon.

Q. Even so, it is not prohibited and it is not unreasonable, but there is no rule which practically requires the vakil to abandon for ever the document which he has not printed ?

A. I do not know.

Q. Now, with regard to revisional jurisdiction, different opinions are taken as to the scope of section 115 of the Code. Apart from section 115 of the Code there is section 25 of the Small Cause Court Act. I gather that there are over five hundred such applications before the court in the course of a year. This is the first province where the jurisdiction under section 25 seems to be giving a certain amount of trouble. Is it in this part too frequently resorted to—section 25 ?

A. Having regard to the total number of small cause cases I should say it is rarely resorted to.

Q. Those applications, I take it, where the Judge before whom they are moved does not issue even a rule *nisi*, do not count as under section 25 ?

A. I think that section 25 includes all of them.

Q. Of these applications, in how many cases, roughly, is the respondent called upon at all, that is to say does a notice issue to the respondent, or is rule *nisi* granted ?

A. I think in a larger proportion than in second appeals.

Q. Are they ultimately dismissed or is a rule *nisi* refused ?

A. I think in very few cases a rule *nisi* is refused.

Q. Then the respondent is called upon, and there is a period of eight months, which we have been talking about, and ultimately 76·1 per cent. are dismissed in the end.

A. And that is a higher proportion than second appeals.

Q. But now as regards those cases, where there is an interference, one must assume that the interference is just and right, and necessary ?

A. Yes.

Q. But do you not think that the difficulty here comes from the fact that the cases are not perhaps sufficiently carefully scrutinised, before the respondent is troubled with it at all. In some other provinces, I do not suppose that of three applications for a rule *nisi*, under section 25, it is granted in more than one case.

A. Small Cause Court revisions are also marked under Order XLI, rule 11, before a notice goes to the respondent.

Q. I do not exactly follow. Applications in revision go before, I think, what is called the admission court ?

A. All applications for admission go before the registrar in the first instance and if the registrar thinks that the grounds of revision indicate a point of law, then he immediately orders a notice to the respondent.

Q. In fact you do as they do in second appeals ?

A. Our practice in second appeals is different. I will say it is done as in the first appeals. In first appeals the registrar admits it and issues notice to the respondent. Civil revision petitions under section 25 are dealt with in the same way.

Q. From what I understand the man has only to present a petition under section 25, and if the registrar considers that there is a point of law, the respondent is called upon straightaway. If the registrar considers that there is no point of law then he posts it for a hearing under Order 41, rule 11 ?

A. Yes.

Q. Do you not think that it is absolutely and altogether wrong ?

A. If the application is to come before a single Judge it will take three months before he decides that notice should go to the respondent or not.

Q. I do not want to suggest that one court has a better method than another. In my court the way in which it is done is this. If a man wants to apply under section 25, he comes to the court with his petition, properly stamped of course, and he moves his motion. He has got a copy of the judgment, or some copy to show to the Judge, and then he argues shortly and shows why he thinks that there has been a miscarriage of justice. If the case is a strong one and it is necessary to trouble the respondent, then you interfere, but if the case does not turn out to be a strong one then you refuse to issue a rule *nisi*. But as a matter of fact the Judge does that, and the result is that the respondent is not, at any rate he should never be, troubled unless it is really a case for interference from a revisional point of view. It is not a question as to whether there is a point of law, but whether the court in the exercise of its discretion shall interfere with the Judge's finding from which the law allows no appeal. Is that not much sounder from the legal point of view ?

A. I have not much experience of Small Cause Court work.

Q. If there is any difficulty owing to applications under section 25, do you not think that probably the better remedy would be to bring revisional applications, as soon as they are moved in the court, at all events before one Judge, and let him make up his mind at the earliest moment as to whether there is a *primâ facie* necessity for interfering at all. Would you be against that ?

A. I would not be against that, but there has not been any complaint that the registrar has used his discretion this way or that way. The registrar is very often stricter than a single Judge.

Chairman.—*Q.* The registrar does nothing by himself. He only admits but never refuses.

A. He does not refuse. If he is inclined to refuse, he posts it before a single Judge.

Sir T. Desikachari.—*Q.* Do not such applications come before an admission court ?

A. Only when the registrar thinks that he ought not to admit them.

Chairman.—*Q.* The result is that the registrar does not post anything under Order XLI, rule 11, so to say, unless he is of opinion that there is no point of law ?

A. Yes.

Q. Is it the view in this court that under section 25 the court can only interfere on points of law as distinct from points of fact ?

A. I think there is in the language of section 25 itself that there should be a question of law.

Q. Not quite. It says the decree or order ought to be according to law. Is the view taken here that according to section 25 the applications should be confined to points of law ?

A. That is the general impression.

Q. That is why the thing is treated practically as a second appeal.

A. Yes.

Q. Now, section 115, I understand, is construed in this court as in Calcutta. The view is that it is open to interfere with interlocutory orders as well as with final adjudication of cases.

A. Yes.

Q. One understands that in some cases interference at once is more beneficial than it would be at the end of the case after an appeal. Suppose a Judge wrongly holds that he has jurisdiction. It is better to interfere then and there than to let him try the case.

A. Yes.

Q. Do you think it would be possible to state particular instances like that where the power to interfere with interlocutory orders may be exercised ? Do you think that would do any good ?

A. I think it will decidedly do some good if the Judge who decides the question of jurisdiction, refers it on the application of the party to the High Court.

Q. I think there is a power of reference. But it seems never to have been used in civil cases.

A. Yes.

Q. What I suggest to you is—I am not suggesting it as a considered opinion but I am putting it simply for your opinion—whether it would be better to refuse liberty to interfere generally in interlocutory matters except in certain specified instances such as the cases I have mentioned ? Do you think that would keep the bad law under section 115 down to some extent ?

A. I should think so.

Q. You know the Privy Council ruling about section 115 which is rather an old one. I take it that in practice these rulings are not followed. I mean section 115 has come to this stage, that if a Judge wants to interfere he can and if he does not want to interfere he can always say that he has no jurisdiction.

A. Yes.

Q. Now the two phrases in section 115 that cause difficulty are " material irregularity " and " acting illegally." Have you ever thought whether any other phrase could be introduced in that section to confine it to those cases where the court usurps power which the legislature has denied in some way or has proceeded with irregularity in the sense that the ordinary provisions about procedure have not been complied with ?

A. I have not paid much attention to it.

Q. You have never amused yourself by trying to amend the section.

A. I always felt thankful for the awkward expressions.

Q. Then I see you lay stress upon the fact that parties and witnesses are being brought to court over and over again and the case is not heard, and that it results in a great deal of inconvenience. You say you have known cases where small farmers have practically lost a major portion of the fruits of their labour because their rich neighbour happens to have a litigation at the time of the harvest. Have you experience of civil work in the districts ?

A. Yes.

Q. Is there any reason why judges should put down a great deal more work for one day than they can hope to cope with ? Do you see any reason for it or any advantage ?

A. One should say one never knows the length of a case, ordinarily, at the time you adjourn a case 2 months hence. Even the pleaders may not be able to say how long it will take.

Q. I take it that a reasonable margin is all that is required and if once in several months an hour has to be spent in writing judgments or inspecting the office that would not be altogether a loss.

A. Yes.

Q. You say that there is no good in curtailing the right of appeal if section 115 is left in its present place ?

A. Yes.

Q. Then you suggest that records should not be sent up to the High Court because it is one of the causes of delay ?

A. Yes.

Q. Do you find that in practice stay of proceedings is obtained by getting the High Court to send for records from the court below ?

A. Very often.

Q. How does the man get records called for by the High Court ? By applying for revision or by lodging an appeal ?

A. Either by lodging an appeal or by putting in a revision application.

Q. What you say is that compulsory sending for records should never take place in case of interlocutory appeals ?

A. Yes.

Q. If the rule *nisi* is issued under section 115, has the court below to send all the papers up ?

A. Yes.

Q. And you think that that should be stopped ?

A. Yes.

Q. I understand there is a rule among the amendments made by your High Court that this will not be done; so that grievance does not obtain in Madras now ?

A. But it does obtain in other places if not in Madras.

Q. Then you would abolish all appeals under clause 15 of the Letters Patent unless there is a certificate ?

A. Yes.

Q. Then under the amended Letters Patent, there is no Letters Patent appeal in revision cases ?

A. No.

Q. If the value is limited to 1,000 Rs. in money decrees then you say that your answer to question No. 18 would apply. I do not understand what you mean by that. Do you want in any way to restore the law as it was prior to the amendment of 1919 ?

A. No, I do not want to go back.

Q. Would you tell me please whether in this province the High Court has made any rules under section 9 of the Suits Valuation Act for fixing the value for purposes of jurisdiction ?

A. I do not think the High Court here has made any rules.

Q. Has the Local Government made rules under section 3 for valuing land cases for the purposes of jurisdiction as distinguished from court fee ?

A. No.

Q. The Local Government has made no rule, then at present the position is entirely under the Court Fees Act both for purposes of jurisdiction and for the purposes of court fee ?

A. Yes.

Q. Would it be possible in this province without in any way enhancing court fees as laid down in the Court Fees Act to make rules regarding valuation for the purposes of jurisdiction so that while a land suit would be computed as at present for the purposes of court fee, for the purposes of jurisdiction a different multiple will be fixed. If that is done, do you think it will bring valuation of suits into rough accordance with the right value of the land ?

A. It is very difficult to lay down a general rule. For the purposes of court fee it is very much below the real value, but to apply a multiple which would bring it in accordance with the right value of the land is very difficult.

Q. I am not asking you whether it should be 20 times or 30 times. What I am asking you is whether you think that the valuation of land in many cases is out of all relation to the revenue. Are there cases where it would be worth 100 times the revenue ? Would it be possible to fix some multiple which should be roughly fair in a great majority of cases and correspond with the real value of the land ?

A. Assessment is based upon some scientific principles. In the Madras presidency it varies at different places. In some districts the value of the land is 100 times, even 1000 times, the revenue.

Q. Do you consider that these exceptional cases, where the land is worth many times the revenue, can be classified and given a separate principle ? Can they not be separately dealt with so as to leave all other cases for which a set of rules can be framed by the Local Government in order to bring the notional value for the purposes of jurisdiction into accordance with the real value ?

A. I think it will be very difficult in this province.

Q. So it is a matter of great trouble in this province. What do you think of the market value for the purposes of jurisdiction ? Market value can always be ascertained.

A. When there is a dispute a commissioner can be appointed, but we have to experience a good deal of trouble and difficulty to arrive at the proper market value.

Q. Supposing we go on as we do as regards court fee and the valuation for urisdiction is made independent of court fee by market value, do you think there would be any check in preventing the plaintiff from putting any figure he likes for the purposes of jurisdiction ?

A. I do not think there can be any adequate check.

Dr. DeSouza.—Q. In the present state of this province, if you have suits according to the market value, a large number of suits now tried by munsifs will have to be tried by subordinate judges ?

Chairman.—Q. Anyhow, you are not very hopeful about bringing the valuation of suits for the purposes of jurisdiction in land cases into accordance with the real value of the land ?

A. It will be a very difficult task.

Q. Assuming for the sake of argument that any value you take for the purposes of jurisdiction would, in land cases, be found to be the real market value, do you think it would be possible to distinguish between cases for the purposes of second appeal according as they are above or below a figure, let us say, Rs. 500 ?

A. It may not be difficult to classify cases for that purpose.

Q. May I put this to you in this way. Some people think, and I myself am of the same view, that in cases which are really small—cases of small plots of land worth only Rs. 300 or so—which have no special importance otherwise, the right to contest a third time on points of law should not be given as a right. Do you follow me ?

A. Yes.

Q. One appreciates that a case of small value may be very important, but there cannot be the same right of second appeal even in the smallest land suit. Do you think it would be unfair to take a limit of Rs. 500 and say that the appellant should get special leave of the High Court before he can appeal at all, *i.e.*, before he can have a third hearing of the case ? Would that be preferable ?

A. I think that there will be a great difficulty. In the first place I do not see how one will classify his case as to whether it is below Rs. 500 or not.

Q. What I am suggesting is that a great many second appeals are thrown out under Order 41, rule 11. Those appeals need not worry us because in those cases the respondent has not the trouble of coming to court though, of course, it is a waste of the time of the High Court. Of those cases which pass rule 11 one can see that in order to put right one case the court has to hear at least three cases many of which have no special importance and in which the respondent has got concurrent findings in the courts below and it hears them simply because under rule 11 it is not prepared to say that there is no point of law. That seems to me to be an inadequate result for a process which causes worry and trouble to so many respondents. One would like to give a second appeal rather a more satisfactory scrutiny. What I am thinking is that one way in which it might be done would be to say that up to Rs. 500 you should get special leave to bring the second appeal and the only thing that would turn upon the value would be the question whether the appeal was of right or was by special leave and leaving it to the judge to consider as a reason for granting leave the importance of the case to the parties, the fact that the market value is greater than the appellant's valuation, and any other circumstances. In other words would it be possible in cases under Rs. 500 to allow a second appeal only where it is made out that justice requires a third hearing ?

A. I think you are confining it to immovable property.

Q.—No, but in the case of immovable property it would be rather difficult.

A. Then I think that the practice followed in the Madras High Court is fairly satisfactory and it cannot be said that the courts here unnecessarily summon respondents. I do not know whether the present practice has been brought before you or not.

Q. What I mean is that our aim in amending the procedure is to protect a respondent in a case from being put to trouble because of the third hearing in the central court of the province.

A. I am agreeable to the extent that if the appellate judge grants a certificate to the effect that there are still questions of sufficient importance and he should therefore give leave to appeal the second appeal should go through; otherwise not.

Q. Then the difficulty would be this. Do you think that the district judges or subordinate judges in this province would grant leave to appeal against their own decisions ?

A. I think they will certainly do.

Q. I gather that there are certain interlocutory appeals mentioned in Orders 38 and 39 which you would like to cut down. Would you just tell me what they are ?

A. In Order 43, clause (*q*).

Q. That is to say you do not think that there should be an appeal from an order of attachment ?

A. Yes.

Q. What is the next ?

A. The next is Order 39, about temporary injunctions.

Q. That is to say no appeals against temporary injunctions ?

A. Yes.

Q. And then Order 41, rule 1 and rule 4, *i.e.*, appointing a receiver ?

A. Yes.

Mr. Radhakrishnaiya.—*Q.* Do you not think that appointment of a receiver is a very serious matter ? Why do you take away the right of appeal as regards the appointment of a receiver ?

A. It may be a very serious matter but very few instances have been seen of a lower court using its powers improperly.

Q. That is a matter for the appellate court, but why do you take away the right of appeal ? It is a very serious matter.

A. My impression is that if a court appoints a receiver then, of course, the right of appeal has the effect of making more confusion.

Q. Why ?

A. You file an appeal and get the proceedings stayed for about eight months or nine months, and there is no one to look after the property and the duration of the suit is prolonged.

Q. Then there is objection to the stay being granted and not to the right of appeal ?

A. Right of appeal is useless. The receiver goes and takes possession.

Q. Supposing the appeal is disposed of quickly. Is it not possible to ask the High Court to dispose of the appeal quickly ?

A. It is impossible to dispose of the appeal quickly unless both the parties agree and it is seldom that both the parties agree.

Sir T. Desikachari.—*Q.* Is it your experience that the discretion to appoint a receiver is not properly exercised? The plaintiff and the defendant say that they do not want a receiver, whereas the court appoints a receiver ?

A. I have not got experience of that.

Mr. Radhakrishnaiya.—*Q.* Am I right in saying that your experience is mostly in criminal work and you have not so much experience in civil work ?

A. I am here to give expression to my views.

Chairman.—*Q.* I see you also say that you would not mind if the period of execution is limited to six years instead of twelve years and you would like to see the steps in aid abolished.

A. Yes.

Mr. Radhakrishnaiya.—Q. May I know why ?

A. I would like my countrymen to be little more diligent.

Q. Do you think that the decree-holder who is to have a chance of getting money from the judgment-debtor would not be diligent ? The judgment-debtor has not got sufficient property, or the decree-holder is not able to get hold of the property, in such cases would you deprive him of his honest money ?

A. If he cannot get it in six years it is better that he should not get it for ever.

Q. Better from whose point of view ?

A. From the point of view of the judgment-debtor.

Q. You have no sympathy with the decree-holder. The judgment-debtor can go to the insolvency court and get rid of his trouble. It is only where a man has got some property that the decree-holder can exercise his right of execution within 12 years. There should be no sympathy with the judgment-debtor at all in such cases.

A. I can tell you my reasons for my sympathy.

Chairman.—Q. The point is this. It is not a question of sympathy. The suggestion is that the decree-holders would generally like to get their money and if they do not get their money within six years it is not their fault, and therefore in those cases where they cannot get their money within six years it is better to allow them the period of 12 years, as at present.

A. My point is that if you give any person a certain period, he is likely to sleep till the last few days of this period.

Q. You think that too long a time is a temptation for undue delay ?

A. Yes.

Mr. K. RAGHAVENDRA RAO, B.A., B.L., Official Receiver and High Court Vakil, Coimbatore.

Written statement.

History of Early Law.—The old Code of Civil Procedure of 1882 contains the basis of the mofussil insolvency law which guides the courts in India. The provisions contained therein were of an extremely rudimentary character, which were quite unsuited to the modern conditions of life. Seeing the defective and unsatisfactory nature of those provisions, it was deemed expedient to pass an Act of Insolvency, to suit the present day conditions of Indian life.

2. *Defects of the Old Act.*—With that view, the Provincial Insolvency Act of 1907 was passed, the main provisions of which were based upon the analogous Law of English Bankruptcy. Several distinct drawbacks were noticed in the operation of the Provincial Insolvency Act of 1907 and one of the important defects was that, it encouraged dishonest debtors to file insolvency petitions who became free from liability, as soon as an order of adjudication was made. No insolvent ever filed an application for discharge and there was no obligation for him to do so under the Act.

3. There was no express provision of law under which the insolvency courts could decide questions of title or priority and this has been subjected to series of conflicting decisions in India. There was also none of the civic disabilities attending upon a person in consequence of his bankruptcy.

4. *Changes in the New Act.*—In Act V of 1920, many drastic changes have been introduced, many of the provisions of which have been taken from the English Bankruptcy Act of 1914 and the Presidency Towns Insolvency Act of 1909. Many of the drawbacks which were noticed in the Provincial Insolvency Act of 1907 have been incorporated and it remains to be seen whether the object

of the framers of the Act and the spirit which prompted the revision of the Old Act would be fulfilled.

'5. Comparison between the Provincial Insolvency Act and Presidency Towns Insolvency Act:—

In my view, the whole of the provisions of the Presidency Towns Insolvency Act should have been incorporated with such changes as are necessary for the mofussil. The provisions of that Act are complete for speedy and effective realisation of the assets of the insolvents. A provision similar to section 24 of the Provincial Insolvency Act should have been incorporated in the Act. In all cases in which debtors file insolvency petitions, Act V of 1920 and the rules framed thereunder make it obligatory to file a schedule of his assets and liabilities. But, in cases, where a creditor files an insolvency petition against a debtor, it should be made obligatory for the debtor within a specified time from the service of the notice from the court to file a schedule. I have come across many instances in which the filing of schedule in a creditor petition has been delayed for several months after the petition was admitted or an order of adjudication is made. In all cases where the interim receiver has been appointed in a creditor petition, and also in cases where final orders of adjudication are passed, copies of these orders should be served upon the debtor making it obligatory on him to file a schedule within 30 days from the service of the notice and a penal provision should be inserted as stated in section 24 (3) of the Presidency Towns Insolvency Act, if he fails to do so

6. *Obligation to file schedules.*—In all cases of creditor petitions not only is the filing of schedules delayed considerably, but the delay gives room for the practice of fraud in the fabrication of fictitious debts and claims, and disposal of the property by the insolvents in the meanwhile. Notices from the office of the official receiver will be sent sometime after the petition was received by him, and they are many a time evaded successfully by the insolvents.

A suggestion.—I would even suggest that the order of adjudication may be passed on the application of a debtor immediately and the schedule may be asked to be filed later on by him. It takes some months before service is effected on all the creditors and only then an order of adjudication is to be passed.

7. *Sections 36 and 37, 58 and 59 of the Presidency Towns Insolvency Act are necessary.*—Provisions similar to sections 36 and 37 of the Presidency Towns Insolvency Act should have found a place in this Act. There is no provision in the present Act to compel a person to pay to the official receiver any sum due to the Estate or deliver any articles or movable belonging to the estate in the hands of third parties. We have to take legal proceedings by way of suit even for the recovery of small amount. Filing suits for the recovery of sums due to the estates, based upon book debts or pronotes or mortgage bonds, involve considerable expenditure in the way of court fees, vakil's fees and other legal expenses.

8. In my view sections 58 and 59 should have also found a place in the present Act. Considerable doubt has arisen whether the official receiver could move the court for the seizure of any specified article or articles believed to be in the possession of the insolvent and whether the official receiver can move the court for a search warrant to search any premises where the insolvent is believed to have concealed his properties. Unless a process is taken by any of the creditors paying the proper court-fee, no process is issued by any of the courts. The official receiver should be able to move on his own motion any court for the exercise of powers conferred under section 59 of the Presidency Towns Insolvency Act. The creditors sometimes collude with the insolvents to the detriment of other creditors and the official receiver must be able to act independently in case of necessity without the half of the creditors. The powers mentioned under section 59 of the Presidency Towns Insolvency Act are of far reaching character and are absolutely necessary for an official receiver to speedily get at the properties of the insolvents and the possession of these powers by the official receiver will have a wholesome fear and will check dishonesty. The powers given under section 56 (3) of

the Provincial Insolvency Act are not sufficient to put a stop to the growing dishonesty of the insolvent debtors.

9. *No assistance from the creditors for recovery of pecuniary claims.*—In my experience, as official receiver, of more than 5 years, I know that the creditors are extremely unwilling to incur any expenditure for filing suits, to recover monies due to the estate even in cases of admittedly good claims. In nearly all the cases, the amount shown as outstandings and debts, even on good securities, could not be realised for the benefit of the estate. Notices, as a rule, are sent to all the debtors to pay up the sums due to the insolvents to the official receiver, but seldom, any payments are made with reference to these debts, because I think they know perfectly well that the official receiver could not realise them except through filing suits, which are not done by any of the creditors. So, in these cases, where pecuniary claims are due to the estate, neither the creditors take action nor the debtors pay the amounts to the official receiver. I always issue notices to the debtors to pay the sum to the official receiver and also issue notices to all the creditors asking whether any of them would be willing to finance the official receiver for the collection of these debts. In nine instances out of ten I would have no response to the notices, and the next step would be to sell the book debts in public auction. The creditors are never present at the auction of the book debts and in the majority of the cases, there is no attendance of bidders at these auctions, and even if there are any bidders, the book debts do not fetch any value. The official receiver must be able to get an order for payment of money or for the delivery of an article as provided for under section 36 of the Presidency Towns Insolvency Act to effectively realise the assets. Any order under this section is appealable.

10. *Difficulties in executing the orders of the official receiver.*—No process or court-fee should be made obligatory for applications under sections 36 and 59 of the Presidency Towns Insolvency Act and the court should move on the report or application of the official receiver and the official receiver can be asked to debit the value of the court-fee to Government in cases where the estate could bear it. In all other cases where the creditors are indifferent and where there is no money in the estate such court-fee can be taken by Government later on if any money is realised in the estate.

11. *Difficulties of realisation with regard to immovable properties.*—I have been dealing with the realisation of pecuniary claims and movables under the Provincial Insolvency Act and the difficulties under which the official receivers are labouring and I will now deal with the practical difficulties with regard to taking possession and leasing immovable properties. The creditors are extremely indifferent in these parts and they never think seriously of helping the official receiver in the realisation of the assets. In numerous instances the official receiver has to take action *suo motu*, without any help or financial assistance of the creditors. The practical difficulties in taking possession of immovable properties of the insolvents are many. Most of the lands are situated in country parts, and without the assistance of the creditors, it is not possible to take possession. The insolvents are asked to deliver possession which he is theoretically ready to do. Neither the official receiver nor any of his establishment could go to the spot to find out tenants or lessees to cultivate the lands as this involves some expenditure which nobody would bear, and unless the estates are able to bear the expenditure, journeys could not be undertaken. We cannot rely upon asking the insolvents to get any tenants as it is likely that he would bring in his own nominees. Sometimes he may say that no lessees are forthcoming and with these excuses he may practically evade delivering possession of the properties to the official receiver. In cases where the creditor's help is not forthcoming, the official receiver must be able to indent upon the services of the village officers who must be able to take possession of the properties and lease them out, on behalf of the official receiver. It should be obligatory on the part of the village officers to help the official receivers whenever their services are necessary, and I have no objection even to pay a small remuneration, if necessary, for the services so rendered by them. They can be made to sell cattle or other movables in the village, to take possession of the immov-

able properties, advertise sale in the village and do such of the services as are necessary for the estate.

12. *Persons deriving title from the official receiver should be given the assistance of courts.*—Courts should put in possession purchasers of properties from the official receiver through the process of court as ordinary holders of the sale certificates in court auction. There should be no difference between a purchaser from the official receiver and a purchaser in a court auction. The ruling reported in 42 Madras Law Journal, page 185, is doubted by some courts and this should be made clear. Lessees from the official receiver or the official receiver himself should be able to take possession in a similar way removing any obstructor who has no right, *primâ facie*, to be in possession of the property and the official receiver should not be driven in all these cases to the dilatory procedure of filing a suit against the obstructors. The court, if it finds that the matter is too complicated or involves an important adjudication of title between third parties, should refer the parties to a suit, and in all other cases it should assist or deliver possession on mere application through process of court.

13. *Defective establishment of the official receiver.*—The establishment of the official receiver is totally inadequate to meet the increasing work in the insolvency cases. The official receiver should be given at least two permanent clerks with a higher salary than the present one for the efficient management of the office. The salary now given is too low to attract competent men and is also not sufficient to induce him to continue in office. There must be greater discretion for the official receiver to appoint temporary clerks and agents in all cases where he considers such appointment is necessary. The official receiver should be empowered to indent upon the services of court amins and process-servers to execute any process on behalf of the official receiver. It is enough, if the court is able to execute the process of the official receiver through the process establishment.

14. *Indifference of creditors.*—The creditors in these parts are hopelessly indifferent in the matter of assisting the official receiver, to realise the assets and the official receiver is greatly handicapped by want of assistance from them. They think they are throwing good money after bad, and they evince an interest only in cases where their object is to keep the debtors in jail. As soon as they find that the debtors are out of jail, they think that their monies are lost and in many cases, they never trouble themselves again. Their conduct after the debtor is out of jail, is of utmost indifference and they seldom take any action. They fail to understand that by a concerted action among all the creditors, they can conserve every pie for the benefit of themselves. Only in very rare instances, creditors actually prosecute the petition with earnestness. The indifference of the creditors is partly due to the dilatory procedure involved in the Provincial Insolvency Act. Nothing could be done except by way of suit and this deters creditors from actively coming forward in these proceedings. Creditors also do not realise that the Insolvency Law is intended to effectively distribute assets among all the creditors equitably, instead of a scramble amongst creditors of the insolvent for his assets.

15. *The New Act has not been properly understood and felt.*—Debtors also have not understood the spirit with which the New Insolvency Act was passed. Their only object is to free themselves from the immediate arrest or release from detention or civil jail. In considerable number of cases insolvency petitions are filed by the debtors, only when they are arrested or sent to jail. After filing their insolvency petitions if they are released or any protection order is granted, they do not care very much to prosecute the petition. They sometimes settle with the creditors who got them arrested and leave the petition to be dismissed for default. I have come across instances even in creditor applications where such collusions between the petitioning creditor and the insolvent are not uncommon. Even according to the new Act only about 10 per cent. of the insolvents apply for discharge under sections 41 and 42 of the Provincial Insolvency Act and the liability to apply for discharge is little understood by the debtors, as also the penal provisions of the Act. The rigour of the new Act is little felt by the insolvent in this district. This is to a certain extent due to the illiteracy and the peculiar condi-

tions and habits of life of rural people in this district. They do not realise the earnestness of this Act and they only think that this is merely intended to make them immune for arrest or imprisonment.

16. *Vesting order.*—Recent rulings of the Madras High Court go to show that a vesting order is absolutely necessary for a valid administration of the properties by a receiver or an official receiver. After all this is an extremely formal matter and, sometimes, want of this formality has resulted in gross miscarriage of justice. It must be made clear that want of any vesting order will not vitiate any proceedings.

17. *A fund suggested.*—I have already referred to the indifference of the creditors, and unless the official receiver is provided with a fund from the Government, in cases where the creditors do not help the official receiver, the official receiver by himself will not be able to realise many of the estates. The official receiver must be able to meet any necessary expenditure out of these funds which can be recouped whenever realisations are made. By providing such a fund, the Government will not be losers and in most of the cases the expenditure would be very small and the expenditure can always be realised in all the estates. The official receiver can use his discretion in utilizing the fund.

18. *Auction by the official receiver.*—The official receiver must be relieved of the duty of conducting auctions by themselves. The time taken at these auctions is considerable and he can utilize that time so taken for a better purpose in doing insolvency work. The privilege of holding auctions through recognised auctioneers should be given, as in the case of official assignees. If this course is not feasible, the nazirs must be authorised to hold the auction and a percentage, like poundage, out of all the sale proceeds may be paid to Government as in the court sales. The Government also will be profited.

19. *Exemption under section 88 of the Registration Act necessary.*—The official receivers are busy officers and much valuable time is taken in attendance before the registration officers. About 10 to 15 sales take place each month in this district, and much of the official receivers' time is taken for appearing before the registration officers. Official receivers must be exempted under section 88 of the Indian Registration Act.

20. *Protection of official receiver.*—The official receivers must be protected as regards *bonâ fide* acts done in the course of the administration of the estate. The protection now given under the Provincial Insolvency Act is not sufficient.

21. *Reasons for delay in insolvency work.*—I should think that every insolvency petition must be over within six months and no case should take more than a year. Quick realisation and speedy payment of dividends must be the sole object in the administration of the Insolvency Law. The main reason for delay is due to the fact that in the majority of the insolvency cases, fraudulent alienations exist which have to be cancelled and only then the properties should be brought for sale. In every case we find certain dishonest alienations which have to be set aside under sections 53 and 54 of the Act and it is not in the interest of the estate to bring them for sale without doing so, as properties would not fetch proper value with a cloud hanging upon them. Proceedings started in the district and sub-courts take nearly two years and in the meanwhile the realisation of the properties have to be kept in abeyance till then. The courts are already overworked and they are not able to dispose of these applications speedily. The courts must be able to keep apart some special days for insolvency work or a special judge invested with the necessary powers should be asked to dispose of the insolvency proceedings.

22. *Suggestions to meet the increase of establishment in the insolvency work.*—The official receiver is asked to work with strict regard to economy and this has been at considerable sacrifice of efficient administration of the estate. I would make the insolvency administration self sufficient by increasing the court fees, if need be, in the insolvency proceedings. In England some fees are chargeable under the English Bankruptcy Act of 1914 for all proceedings in insolvency. A

court fee from Rs. 5 to 100 may be charged for all applications under sections 53 and 54 of the Act according to the subject matter of the dispute. These proceedings take more time of the court than an ordinary suit in the sub-court. Proofs of claim may be levied a court-fee from Re. 1 to Rs. 5 according to the value of the claim. The court-fee of 12 annas on the insolvency petitions is too low except in summary cases and a court-fee of Rs. 25 may be levied without any difficulty. I have only suggested the lines on which fees may be levied so that insolvency administration may be self-supporting. In many cases fees are levied under the English Bankruptcy Act in England (*vide* order dated 19th April 1920 made by the Lord Chancellor with the concurrence of the treasury as to the fees and to the percentages under the Bankruptcy Act of 1914). In the interest of the litigants, the insolvency administration must be efficient and in my opinion it could be efficiently done on the lines suggested by me, by raising, if necessary, funds in the way indicated in this paragraph to maintain the increasing establishment necessary for the same.

(*Oral evidence not printed.*)

Mr. ALLADI KRISHNASWAMI AIYAR, Vakil, High Court, Madras.

Written statement.

I shall indicate my answers to some of the questions propounded in the following few paragraphs. Before I deal with the particular questions it is as well that I make my general position clear. I do not believe that any great or lasting results are likely to be attained in the way of securing speedy administration of justice by mere manipulation of judicial machinery, a tinkering with the processual law or even by a few changes in the substantive law here and there.

Whether it is in the highest court in the land or in the subordinate courts I need hardly point out that the personal element of the presiding judge is a very important factor in the attainment of the desired end. In my experience I have known of judges who with alacrity and at the same time with patience have heard causes and have disposed of them quickly. I have known of judges who hear causes for days together with neither satisfaction to the counsel appearing in the case nor to the litigant public. In the mofussil I have heard complaints of tardiness of vakils, of dilatoriness of the Indian litigant public more often from judges whose competence is not of a high order than from judges who are efficient and who have been discharging their duties to the satisfaction of all concerned.

In dealing with the problem of delay in the administration of justice and the efficacy of the remedies suggested, we cannot altogether ignore the illiteracy of the vast mass of the client population in this country whose interests are vitally concerned, and in any attempt at law reform care ought to be taken to see that the remedy suggested by way of curing them of their dilatoriness does not result in their losing faith in the administration of justice and making them feel that courts exist merely for disposal and not for doing justice between man and man. Again, we have to remember that the fundamental aim of the courts is to secure sound justice and that the attainment of speedy justice is only a subordinate and secondary aim, though a very important one. So under the guise of tackling the problem of delay, drastic changes ought not to be attempted in the substantive law of the country, nor is it right to make serious inroads into well-accepted principles of equity which have found favour with English courts and which have been adopted in India.

If any change is to be effected in the substantive law, it must be the work of an independent commission specially constituted for that purpose. For example, there is no use of attempting to deal with the question of *benami*; the problem will have to be viewed in the light of the whole topic of resulting and implied trusts; nor is there any use in attempting to get over the doctrine of part performance by a side wind. That question does not stand by itself; the whole problem as

to the extent and degree to which personal equities are to be enforced in this country ought to be canvassed before any satisfactory solution can be arrived at on that matter. Nor is it such an easy affair to abolish the distinction between a mortgage by conditional sale and a sale with an agreement for resale superadded to it.

An insistence on too much rigidity and on the observance of strict formalities in the daily transactions of life in a country where the mass of its people is illiterate is neither conducive to the advancement of justice, nor to the facility of business nor to the prosperity of the country.

The problem of delay is bound up with the important question as to the place of case-law in the administration of justice. The importance of case-law is an essential feature of the administration of justice of every country permeated by English jurisprudence. The Indian judge, the Indian practitioner and the Indian litigant have to face a much more complex situation in this country than even their brethren in England. The necessary importation of English case-law into this country, the fashioning of the Indian codes upon English common and Statute Law, the increased legislative activity of the Imperial and the Local Legislatures, the multiplication of Indian High Courts, the mass of conflicting decisions and the occasionally bewildering pronouncements of the Judicial Committee, the growth in the number of official and non-official journals have not certainly lightened the task of the administration of justice.

I do not mean to suggest that the remedy for such a state of things is to shut out light altogether. A standing Legal Commission in each Province to note and to remedy the obvious defects in the working of enactments and to remove anomalies arising from conflicting decisions, a vigilant and active rule committee recruited from practising lawyers (senior and junior) may help us to some extent in easing the situation. The public have a right to expect the Legislative Department of the Government of India and the Local Government to pay more attention to the evil arising from conflicting decisions which is annually increasing in magnitude and take up in right earnest the work of "re-codifying, revising and removing doubts which is one of the primary duties of the department." A regulated law reporting might be of some assistance. But the abolition of appeals whether from the judgments of an inferior tribunal or of a judge of a superior court and the removal of the only safeguard against error are not the remedies which are likely to find favour with the public at large or with the profession.

There is only one other point which I want to touch upon and it is this. The Indian Limitation Act with its permutations and combinations as regards starting points and periods of limitations, an Act whose presumed intent is to prevent a man from sleeping on his rights, has been not a little responsible for unnecessary litigation. Mr. Justice Walsh in a note to Rustomji's Limitation Act pathetically remarks, "Was it really necessary in order to prevent a man from sleeping on his rights to devise 183 methods of defeating him? Ought it to be that in order to appreciate the right interpretation of these 183 methods a lawyer should be forced to investigate not less than 10,000 reported decisions?" Is it beyond the range of practical politics, one might ask, to have a simple statute of limitation on the lines of the Act of 1859 or on the lines of the Statute of James? The average litigant is unable to perceive any particular sanctity in permitting a decree-holder in Madras to execute a decree within a period of 12 years and compelling a decree-holder in the mofussil to make successive fruitless and purposeless applications in order to save his rights under a decree. The conflicting decisions of the Privy Council and of the Indian High Courts in regard to properties alienated by a trustee of a religious foundation by way of lease or sale have been a source of perennial interest to the subtle lawyer and to the vigilant litigant.

In my view, so far as the mofussil is concerned, the chief causes that have contributed to such delay as there is in the administration of justice are:—

1. Litigants not getting ready with the necessary materials before suit is launched.

2. Litigants not getting accustomed to employing two counsels in trial causes, and facilities not being afforded for the employment of double counsel by a proper and appropriate scale of taxation.
3. A neglect of the provisions as to discovery and inspection.
4. The non-utilisation of the provisions in Order XII of the Civil Procedure Code.
5. A laxity of practice in the matter of the settlement of issues.

Any suggested remedies ought to be with a view to remove these defects. In the light of the foregoing remarks I will briefly indicate my answers to some of the questions.

I am for a thorough re-organisation of the judicial service.

The judicial service must be entirely recruited from the Bar and from the members of the provincial service who are themselves recruited from the Bar. In spite of my high regard for some of the Civilian judges there is no need to perpetuate the Civilian element either in the subordinate judiciary or in the High Court, in future.

There is no need for continuing the present jurisdiction of the Original Side. A good part of the work done by a Judge of the High Court on the Original Side might be easily entrusted to one or two judges of the rank of subordinate or district judges.

No special training is necessary for district munsifs. The existing training is more than enough. I am against any quantitative test being imposed to insure the efficiency of judicial officers. Such a test has done incalculable harm in the past and is sure to do in the future. It is enough if regular attendance and continued work during stated hours are insisted on.

At present it cannot be said that there is a concentration of work in any particular place in the mofussil. The Government and the High Court in this province have successfully attempted a judicious distribution of jurisdiction and work in the several districts. A distribution without reference to the legal help available and the strength of the Bar in the particular locality is likely to do more harm than good. The subordinate judges and district munsifs are as competent to try the class of suits referred to in question 13 within the limits of their pecuniary jurisdiction as the district judges; and the class of suits are not more difficult than the suits they are accustomed to try. But I do not know how the problem of delay is going to be solved by such a transfer. I am against increasing the scope of small cause jurisdiction, but I am for the constitution of special small cause courts and for increasing the small cause jurisdiction of munsifs if need be. The suggestion as to certain mortgage suits being treated as small causes is unworkable having regard to the conflicting titles that necessarily arise in every mortgage action. I am against untrained talent being entrusted with judicial work, but I have no objection to sub-registrars being invested with jurisdiction up to Rs. 100. I do not think the right of appeal is granted in too many cases and I am against curtailment of the right of appeal or of revisional jurisdiction to any extent and to any degree. I do not think many frivolous second appeals are filed. On the other hand I am for extending the right of second appeals even when a question of fact is involved where the appellate judge reverses the judgment of the court of first instance.

I am in favour of the suggestion contained in questions 53, 54, 55.

I am against the suggestion contained in question 58 and I am for assimilating the law of limitation as to execution of decrees in Madras and in the mofussil.

I am in favour of the suggestion in the first part of question 59.

In regard to trial causes, the suggestion in question 33 as to the examination of the parties is calculated to perpetrate a great injustice upon the defendant.

I am against setting down a minimum period for disposal of trial causes and against power being vested in the Court to curtail oral evidence. The suggestion

contained in question 37 as to time limit in cross-examination of witnesses is unthinkable.

Under the existing conditions arbitrary rules as to adjournments are likely to retard than help the administration of justice.

The fixing of trial causes at the end of each week in consultation with the Bar is likely to facilitate speedy disposal.

I am for raising the jurisdiction of district munsifs and for its being made a rule that all appeals from sub-courts should be laid before the High Court.

I do not see anything wrong in the existing law as to stay of execution. The Civil Procedure Code is on a line with the recognised principles in England with the only difference that in England both the court of first instance and the court of appeal have a concurrent power of stay.

As regards the simplifying of the rules as to evidence, I agree in the suggestion contained in question 73 but no change in the law is called for because even under the existing law it can be done.

In regard to mortgage documents, I see no objection to some change; but we have to reckon with *Pardanashin* ladies, members other than executants in joint-families, and minors and the scope of the application of the presumption referred to in question 72 would be limited indeed.

I am against any such change as is contemplated in questions 76—81.

Mr. ALLADI KRISHNASWAMI AYYAR, Vakil, High Court, Madras, called and examined on Saturday, the 2nd August 1924.

Mr. V. Radhakrishnaiya.—*Q.* You are a lawyer of 17 years' standing?

A. Yes.

Q. In the memorandum submitted by you you have stated certain reasons for congestion in the original courts in the mofussil. You have not stated the reasons for the congestion on the Appellate Side of the High Court. Of course you are aware that the congestion there is also very great?

A. Yes, because there is no question of proportion. If there is any trouble it must be because either there is not enough number of judges or there is something wrong with the constitution of the court and that is why I have not addressed myself to the congestion on the Appellate Side.

Q. What you mean to say is this. The time taken in getting the case ready in the case of an appeal on the Appellate Side is very little as compared with the time taken in disposing of it after it is ready.

A. Yes. I can tell you that I have many appeals ready in my house over two years old and I am receiving letter after letter from my clients as to what has become of their cases, but I am not in a position to tell them when their cases are likely to come on for hearing as I myself don't know when they will be heard.

Mr. C. Krishnaswami Rao.—*Q.* You are doing, in these days, 1921 appeals. I think.

A. Yes.

Mr. Justice Stuart.—*Q.* You are speaking about the Original Side.

A. Yes, I am talking of regular appeals.

Q. Do you appear in ordinary appeals?

A. I appear in both.

Mr. Sastri.—*Q.* In what time are these appeals disposed of?

A. I think an appeal is generally done in a year and a half.

Mr. V. Radhakrishnaiya.—*Q.* At present you have finished 1922 appeals.

A. So far as the Original Side is concerned?

Q. Yes.

A. Yes, we have finished the 1922 appeals on the Original Side.

Q. That is because special benches are constituted for disposing of the Original Side appeals ?

A. Yes.

Q. It is also due to the fact that all the documents are translated before the suit is ready for hearing ?

A. Yes. I can also say that the appeals from mofussil are more complicated than the others. I have done appeals both of the High Court and of the mofussil.

Q. All the same, owing to the fact that at least once a year 2 or 3 benches are constituted for the disposal of Original Side appeals and these benches sit so long as the Original Side appeals which are ready are disposed of there are no arrears in the Original Side appeals ?

A. Yes.

Mr. Sastri.—*Q.* Do you think any preference is given to Original Side appeals ?

A. I cannot say if any special preference is given to these appeals, but as Mr. Radhakrishnaiya has pointed out, a number of benches is constituted and those particular benches sit for a particular length of time to see that the appeals are all disposed of.

Mr. Justice Stuart.—*Q.* May I put one question ? Is it not generally the case that the employment of the more expensive agency of a High Court Judge instead of a subordinate judge is required in hearing original cases in presidency towns as those cases require a more qualified judge than other trials ?

A. There is no justification for the employment of the more expensive agency of a High Court Judge for hearing Original Side cases in Madras.

Q. You mean that your experience is that quite the reverse is the case ?

A. Yes.

Mr. Radhakrishnaiya.—*Q.* Your proposal is to do away with the Original Side altogether in the Madras High Court.

A. My proposal is not to do away with the Original Side, but I think a good deal of public time and money is wasted by a learned Judge getting Rs. 4,000 trying trumpery causes. My impression is that he does less important work than a subordinate court or a munsif's court in the mofussil.

Q. I think you have a civil city court here ?

A. The civil city court does less important work.

Q. There is no prohibition in entertaining the cases below Rs. 2,500.

A. That merely is a matter of costs; otherwise there is no prohibition to doing this.

Q. I know this is the practice in the High Court.

A. I am not in a position to make a definite statement as regards this.

Q. Take it from me. I say most of the suits on the Original Side are suits over Rs. 2,500.

A. If you just compare the kind of litigation that crops up in the mofussil, the number of successful suits and complicated suits and so on and that which crops up on the Original Side, I can confidently say that there is more complexity in the mofussil litigation than in the litigation in Madras. I am willing to state under the existing conditions—either on account of the vested interests or on account of the opposition which abolition of the Original Side might evoke—not for abolishing the Original Side altogether. Here in Madras the cases are generally partnership and tenancy suits and I don't find any difference between the mofussil litigation and the Madras litigation.

Mr. Justice Stuart.—*Q.* Are there not many difficult commercial cases before the Calcutta and Bombay High Courts in exercise of the original jurisdiction ?

A. There is justification for Original Side jurisdiction in the Calcutta and Bombay High Courts where there are a large number of commercial causes. The Judges should have special capacity and it will be difficult for an ordinary subordinate judge to try those cases so far as the Calcutta and Bombay High Courts are concerned.

Q. You think you have not got this kind of commercial litigation in Madras. Commercial litigation here is a minority.

A. The only cases of commercial litigation which have come up before the High Court—I can say 20 or 30 per cent. of the ordinary cases—were as regards the sale of goods as a result of speculations in the War and insurance or marine cases which are common in England have not cropped up here.

Q. They do crop up in Bombay and Calcutta.

A. Yes.

Mr. Rao.—*Q.* Now, suits are classified into four classes on the Original Side ?

A. There are only two classes, one, commercial cases and the other, ordinary civil cases.

Mr. Justice Stuart.—*Q.* You will leave testamentary and matrimonial suits to the Original Side ?

A. I do not find any difficulty.

Dr. DeSouza.—*Q.* In this connection, is it a fact that the Original Side of the High Court in Madras has been open to vakils from time immemorial, but is closed in Bombay and Calcutta ; and perhaps one of the reasons for it is that a vakil, as opposed to a barrister trained in England, need not necessarily possess that knowledge of commercial law which the training in England presupposes ?

A. I do not think so. Most of the commercial cases of Madras are done by vakils.

Mr. Radhakrishnaiya.—*Q.* I do not think that there is any commercial case in which a vakil does not appear on one side or the other.

Coming back to the Appellate Side much time is taken, after the case is ready and before it is disposed of. Therefore is there much good in speeding up the earlier stages of the appeal, unless it could be disposed of within two weeks after it is ready ?

A. No.

Q. Then if much time is taken in disposing of a case after it is ready, does it not react upon the time taken in getting it ready ? For instance, printing takes a good deal of time and it can be expedited, but the consideration comes in that there are so many appeals already ready. But if those which have already been printed are disposed of, then they can hurry up the printing.

A. There would be no difficulty with printing. Sometimes they print during the holidays. Printing is not a delaying factor.

Q. As a matter of fact, in criminal matters, they get their printing much earlier because criminal matters are disposed of quickly.

A. Yes.

Q. There is one matter on the Appellate Side bearing on the delay on the Original Side If an appeal is filed from an interlocutory order passed by the judge on the Original Side, or by the lower court, and a stay is granted, that has the effect of hanging up the trial of the original cases for a long time. Is it the practice—I am not quite sure—that such appeals are expedited ? My impression is that they are not.

A. They are generally expedited in this way. The appellant will put in an application for stay. The respondent will oppose the stay, and then generally the

Judge will pass orders expediting the hearing of the appeal. But so many cases are expedited that expediting becomes no expediting.

Q. Some of these expedited cases do not come up for months together ?

A. Yes.

Mr. Rao.—Q. In what way do they effect expedition ?

A. That is a matter for the office. Judges do not trouble themselves about that. I may mention that if there is any urgency about it, then they say let the case be taken by such and such date and we shall dispense with printing. Care ought to be taken that interlocutory appeals are disposed of as soon as possible.

Mr. Radhakrishnaiya.—Q. You remember that Sir Walter Schwabe, C.J., made a rule that appeals from interlocutory orders should be posted for hearing within two or three weeks, and that really was a good measure ?

A. Certainly.

Q. Would you like that to be extended to all appeals and revisions against interlocutory orders ?

A. Yes.

Q. May I take it that very often people file appeals against interlecutory orders merely for the purpose of getting stay ?

A. I cannot say. Sometimes there is a feeling that some injustice has been done, and I do believe that there is an anxiety on the part of counsel to see that only proper cases are launched. When a client rushes to a junior counsel and presses him, then the junior counsel might file a case, but there is anxiety to file only the right revision petitions.

Q. It has been suggested to us by several witnesses who have given evidence before the Committee that a good deal of delay is caused by vakils applying for adjournment of cases which are posted for hearing. Let us take the Appellate Side of the High Court. If you are actually going on with a first appeal, you may ask the other bench to have your appeal, which might otherwise be taken at 11 o'clock, to be taken up later. Such applications do not cause delay and I take it that they are inevitable. It is not the case of your taking a new engagement, the engagement might have been taken a year ago.

A. It is always done by common consent. One vakil represents one client and another vakil represents the other client and surely the court cannot be more anxious than the parties on either side.

Q. Is it true that an understanding between the vakils tends to cause delay in the disposal of cases ?

A. So far as appeals are concerned, it is never the case.

Mr. Rao.—Q. Is it true that at the time of argument too much time is taken ?

I do not think that in regard to the Bench and the Bar it is proper to indulge in mutual recrimination, but so far as I am concerned, oftentimes argument is converted into a lecture, because the Judge learns the rudiments of law after he comes to the court. He is recruited from England as a judge but he is not aware whether a son can have a claim to the property during the lifetime of his father. He does not know that there is a joint family system, and if you convert the court into a lecture room that cannot be helped because the interests of the clients are at stake.

Q. That cannot happen every day ?

A. I am merely putting an extreme case. I think it is a calumny on the Bar to say that they take more time than is absolutely necessary.

Q. Now you have considerable experience of cases in the motussil.

A. Yes, some experience.

Q. In the mofussil cases in which vakils are taken from Madras, are adjournments applied for in such a manner as to cause delay in the trial of cases ? It is

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said that adjournments are applied for because you are engaged in some other court here.

A. We do ask for some adjournment.

Q. Does that really conduce to much delay ?

A. I don't think it does. If at all we ask for an adjournment, it is only before the case is taken up. But when once the case is taken up very few judges adjourn it for any length of time. When once the case is taken up the progress of the case is attended to by the vakil in the mofussil and part of the case is done by the vakil from Madras.

Q. There are always vakils in the mofussil, some of whom are capable men, and when the vakil from Madras does not turn up when the case is taken up, the mofussil vakil will go on with the case.

A. Yes.

Chairman.—I take it that sometimes your clients, when they want you to appear in the mofussil, come to you rather late.

A. That is not done. It is only in very few important cases that Madras people are taken to the mofussil and they are always consulted at the beginning.

Q. Does this happen that when a judge has put down a case in the mofussil, which is a very big and important case, a month ago to a certain date, the party waits till very near that date and then says that that date won't suit his vakil from Madras and that he wants an adjournment for another month ?

A. That happens very seldom. I believe there may be one or two instances so far as original cases are concerned.

Mr. Sastri.—*Q.* Is it not that in the more important cases the pleadings are all drawn up by the vakils in Madras and filed by the pleaders in the mofussil ?

A. Yes.

Mr. Justice Stuart.—*Q.* Do you find that the cases in which you appear in the out-stations, are generally heard from day to day ?

A. Yes, with occasional intervals.

Q. Is it taken up and tried for 6 or 7 days from day to day ?

A. The case is sometimes adjourned. The fault is not always on the one side. There is an inclination on the part of the Bench and the Bar as well, as they become a bit tired.

Q. Is it not necessary that it should be tried continuously in order that the judge may have his mind fixed on it till the case is finished ?

A. Sometimes it is inevitable, because the witnesses are not ready.

Q. If it only happens sometimes, then the work is good. There is no harm done if you get on with plaintiff's evidence and finish it and then take up the defence evidence 10 days afterwards. The only thing is we are trying to find out the practice in the different provinces. In some provinces there is not the slightest attempt made to hear cases from day to day. I only want to know the practice here whether a case is heard from day to day.

A. The judges who don't hear a case from day to day are only the exception and not the rule.

Q. Do they hear the case properly ? Does it sometimes happen that it is taken up for half an hour to-day, just a little evidence recorded, then taken up to-morrow, a little piece of evidence recorded, and then adjourned to the next day and so on ? Does that happen here ?

A. There are judges who do that kind of thing. Especially when a Madras vakil goes some few judges—very few of them—take delight in taking up the case towards the evening at 4 o'clock and the client finds it very difficult to pay this unfortunate vakil. The next day after interlocutory work is over it is taken up again and then adjourned.

Q. When a counsel is engaged from the outside I suppose he is being paid a daily fee and that the case ought to be heard for as many hours as possible.

A. Yes. I have said that such people are very few. The judges are always anxious to oblige both the practitioner and the client.

Q. On the whole you are not dissatisfied ?

A. I am not dissatisfied at all.

Mr. Sastri.—Q. If a judge is only anxious to take the case from day to day, I don't think the Madras vakil would stand in the way.

A. No. All that happens is that before a case is taken up there may be some delay. But when once a case is taken up, it progresses.

Mr. Justice Stuart.—Q. I see that in many of your courts the file is so hopelessly congested that there is not the possibility of a case being taken up at all for 3 years.

A. I don't see any remedy except the increase of the number of judges.

Q. I have here a case which was instituted on 24th July 1916. The issues were framed on 15th August 1917 ; and then the case was adjourned and adjourned and no attempt was made to touch it. The judge went on until he got a temporary court and on 20th January 1919 it was transferred to the temporary court and came on for hearing 3 years after institution. I take it that this sort of thing is quite common in some districts ?

A. Yes.

Mr. Radhakrishnaiya.—Q. I see you are against having any legislation abolishing *benami* transactions ?

A. Yes.

Q. One of the witnesses suggested to us that if you pass an enactment to-day that 10 years hence no *benami* transactions will be recognised, it might be possible.

A. There is nothing so dangerous as that.

Chairman.—Q. Can you tell me why people should try to put a cloud upon their title ? What are the legitimate motives that induce people in this country to enter into such transactions ?

A. I will illustrate it. We have to reckon with the fact that the masses of the people are illiterate. Ladies own property in this country. In joint families there is a reluctance on the part of family members to permit ladies to undertake direct management of property or to enter into any transactions. Then it is a very common thing for the father or the brother to have the property in his name, the real beneficial owner being the sister or somebody else. I know the property of the wife, for example, is entered in the name of the husband, though the property is that of the wife.

Mr. Justice Stuart.—Q. Self-acquired property ?

A. No. Stridhanam given on the occasion of the marriage.

Q. Surely that does no one any good ?

A. I am merely telling you that it does confer benefit.

Q. If she wants she can always make her husband her attorney ?

A. It has become part of the life of the people. In order to prevent the delay in the administration of justice you can't change it.

Q. Would you register partitions ?

A. Yes, it is a very large question. It is a very good thing to have all partitions by registered instruments, and that will save time for the court. But there is a large number of partitions at every place and it will be a hardship to frame a rule like that and compel people to register. I don't think it is a sound policy at all.

Q. Your reply is that whatever may be the advantage the amount of unpopularity is so great that it is not advisable ?

A. Yes. For example unless you know how many people enter into *benami* transactions with this motive or the other motive, where it has become really part of the life of the people, this work ought not to be undertaken.

Mr. Justice Stuart.—Q. You know there are *benami* transactions in the north of India. I don't know about the south, where a Government official purchases land in the name of another. He does not want the world to know that he has the money with which to make the purchase. He puts that in the name of a relative. Should not this be discouraged ? He has obtained money in a manner which he should not and he does not want the world to know it.

A. It is rather difficult. Of the persons who really advance money, how are you going to legislate between competing creditors ?

Chairman.—Q. You have to take that proposition with some liberality. The point is that if a person puts his money in the name of somebody else with a view to deceive his creditors then you can take it under the Transfer of Property Act. But to prevent the habit of keeping the title under a cloud, how far would it be possible by a change in the law to avoid it ?

A. Necessary safeguard has been put to some extent in the Act which holds that if somebody is defeated as a result of this transaction he cannot afterwards go to a court of law.

Q. Well, could you go a step further and say that anybody who puts his property in the name of somebody must take the risk of that somebody deceiving him ? They must not afterwards expect any court of law to unravel the mystery.

A. It is merely the perpetuation of the distinction between legal and equitable estates. It is restricting the rights of individuals. He has got every right to give his property in trust to the other. That is the law in England, and I do not know why it should be changed here.

Mr. Sastri.—Q. Don't you think that the system of joint family leads much to this ? They don't want to buy land in their name for fear of partition. That to a great extent leads to *benami* transactions.

A. Yes, if he has any earnings the presumption is that it is family property. It may be a laudable motive too. It is counted to be a very rigid rule of law.

Dr. DeSouza.—Q. Is it so common in this Presidency for properties to be bought in the name of a person who is considered to be lucky ?

A. Not common. But there are instances.

Q. You say in your memorandum that right of appeal is not granted in too many cases and you also say that many second appeals are not frivolous yet a large percentage are dismissed. What would be the percentage ? Will it be 60 per cent. ?

A. Might be.

Q. Does that mean that many frivolous appeals are filed ?

A. No. I might mention that sometimes you hesitate to file a second appeal. You don't know what to do with an appeal and you are not sure about that and therefore you hesitate to file. The client at that time would not pay your high fee and he goes and files the same appeal through another vakil who is willing to do it on cheaper terms and he succeeds and therefore you cannot say that that appeal was a frivolous appeal. I will give you another instance. In a case I filed an appeal. On the strength of a Full Bench ruling I said there is no use of preferring the appeal. Anyhow, I preferred that appeal and the Full Bench disagreed with the previous Full Bench and so I won the appeal. Therefore we cannot say, sometimes which appeal is frivolous.

Q. Then you don't think you would be justified in advising your client not to appeal. I mean where there is a question of law.

A. Yes.

Q. So the mere fact that a large percentage of appeals is ultimately dismissed does not show that the right of second appeal is being abused ?

A. No.

Chairman.—*Q.* But the question still remains whether in every case, however small it may be, a third hearing is necessary ?

A. I do not understand what exactly the question is ? What is the limit which you would fix ? Is that the question ?

Q. That is the question for which we are asking the witnesses to help us?

A. I am against any restriction of appeals.

Q. It would not be unjust to put a limit upon the right of one party in small suits—say suits for small pieces of land—in which parties insist going on. I agree that the law, as it at present stands is very uncertain and the people being very often ignorant go on until they are stopped. I am not sure that it does not make it all the more necessary to see, in each case, that parties get only a sufficient number of hearings. They will go on having all the hearings you give to them.

A. Let us consider it from the practical point of view. To-day in a case of small cause nature even if it is an original suit, below Rs. 500, there will be no second appeal.

Q. Take only the land cases.

A. So far as the land cases are concerned you have to follow the Suits Valuation Act. Court Fees Act is no test at all.

Mr. Radhakrishnaiya.—*Q.* That is conceded. Rough value is mentioned when the suit is filed and if the defendant has any objection he ought to say so. So the value is agreed to by all the parties.

A. Then we would be proceeding on that footing, but what would you do in easement cases, *i.e.*, air, water, light, etc., and such cases ?

Q. Such cases are incapable of valuation.

A. Yes, in these cases it will be a hardship if there be no second appeal. You must not stop these appeals in order to put an end to litigation and we should try to secure proper justice.

Mr. Justice Stuart.—*Q.* Is it possible to give satisfaction to every one by any method known to man ? I mean, can you make a certainty of satisfying a defeated party ?

A. Every man wants to have his case before the highest court administering justice.

Q. I think that every man should have a right to go to a competent court to get his dispute decided, but the question remains: what is the competent court ? You know quite well that the litigants who fail before the Privy Council are often very dissatisfied with the decisions of the Privy Council. Defeated persons would always try to go further with their cases and you cannot have met many men who have been satisfied with the decisions against them.

A. I think I met several.

Mr. Justice Stuart.—*Q.* Would not even they have gone further, if they could ?

A. In many cases they are satisfied.

Chairman.—*Q.* What I would like to suggest is this. I do not want to raise the present barrier under Order 41, rule 11, more than a little, and I do not want to use it necessarily if I can help it except in cases where a third hearing results in uneconomic expenditure of time, effort and money, having regard to what is at stake. My idea is that there are some judges who regard all points of law as sufficient reasons for letting in a second appeal under rule 11. Although section 100 gives a right of appeal, rule 11 says that it may be summarily dismissed, but where a man has a right of appeal, some think, he should be heard. What I would like is that in those cases where there is a danger of injustice because the law is taking a too elaborate process to decide small cases, the court should have a little more discretion. What I am aiming at is that instead of seeing if there is a

point of law, I think it would be better and more of a protection to the respondent if the appellant has to show some grounds as to why the case should be heard for the third time.

A. I think a certificate from the counsel may be required.

Q. I do not say that you are not right for Madras, but looking over India as a whole, I may say that if you put that responsibility on the profession, it will result in trouble. You may get a judge who may say that this was a frivolous point, the man should not have certified it, and there will be trouble. It requires a certain force of character to refuse the certificate.

A. I recognise the difficulty, but I do not know if there are any statistics available. My opinion is that, after the increase in the court-fee and after the increase of the fee allowed by the High Court, I find very few cases below that standard to which you are referring.

Q. You have no right under rule 11, to treat a small case differently from a big case ?

A. The fee which is allowed by the High Court for second appeals is Rs. 25 or Rs. 30, and I do not think that, unless there is a substantial point, any responsible counsel will advise an appeal in such cases. I am not opposed to your suggestion in theory.

Q. But would you be against it. Now supposing you say it is not practicable to change rule 11, we ought to do a little more for the respondent than we do at present ?

A. I quite agree.

Q. Would you take a figure which would be sufficient for a small second appeal and say that every appellant, after passing under rule 11, should have to deposit as a security for the respondent's costs, say Rs. 40. There will be no question of arguments as to getting out of it and no jurisdiction to increase or to waive it.

A. In very very few cases I will countenance that. I think, in principle, there is no reason why the respondent should not be protected, but it must be in a very few cases.

Mr. Justice Stuart.—Q. May I point out something to you. The last figures, we have, show that 1899 second appeals were filed in the High Court on which a valuation could be made. In 94 a valuation could not be made. Out of these 1899, 1669 were for one thousand rupees and less and 230 were over.

A. May I know as to how many of them were land cases ?

Q. They are not so classified. What I mean to say is that I think it is the case in Madras, as it is everywhere else, that most of the second appeals are of small value.

A. Supposing we have three acres of land at Tinnevelly, the cost will be eight thousand rupees while the assessment may only be fourteen rupees.

Q. Out of 1899 second appeals, 722 related to immovable property, that is rather less than half; 656 related to movables, and 521 related to other things. In 1062, that is more than half, the property was under Rs. 250.

A. I do not know what sort of cases they were. Land cases ?

Q. I am taking them *en bloc.*

A. I should like to know more about the nature of the cases, that is whether they were easement cases or were about rights to water.

Q. They could not possibly be all with regard to immovable property, only 722 related to immovable property.

A. I do not know whether the suits under the Estates Land Act are there; they all come up as second appeals.

Q. I see that some of your second appeals are very petty. Are they not ? Nobody could really say that the question at issue was such a one as a reasonable man would get greatly perturbed at it.

A. Apart from any question of valuation, most, if not all, of the questions that arise in the Estates Land Act cannot be described to be petty because they deal with the relationship between a landlord and a tenant. They are of far-reaching consequence.

Q. Do you never get cases like this ? One man sues another man for having encroached upon his land to the extent of 6 inches and then takes up the case to the High Court spending a lot of money.

A. But a man would not be a fool to spend a lot of money in the High Court for such a petty case.

Q. I am very glad to hear that the intelligence in Madras is so high. In the United Provinces I should think that there are many cases brought where one man will spend money freely because he wants to pull down another man in the eyes of his people.

Chairman.—*Q.* In those cases from the revenue courts under the Estates Land Act that come up in second appeal, would you tell me what the questions are that arise for decision ?

A. Questions of commutation, rate of rent, whether the land is an old waste, whether it is a private land or ryoti land, the character of the land and questions of occupancy. Then there are 7 decisions of the Privy Council as to what is an estate within the meaning of the Estates Land Act. The question arises with regard to *inams* whether it is an estate.

Mr. Radhakrishnaiya.—*Q.* With regard to the suggestion in question 33 that at the beginning of the trial of a case and not merely at the first hearing the plaintiff and the defendant should be examined first or rather the defendant should be examined after the examination of the plaintiff and before the plaintiff's witnesses are examined, you say you are decidedly against it.

A. Yes.

Q. Will you kindly tell us your reasons ?

A. The defendant cannot be examined until I know what exactly is the case of the plaintiff. This sort of examination of the defendant before the examination of the plaintiff's witnesses is not known to English jurisprudence.

Q. Do you think it would be a great injustice ?

A. Yes. It also means the revision of the whole judicial system and you must go into the whole question of the frame work of a judicial trial, before you take up a question like that.

Chairman.—*Q.* The thing is this. The plaintiff calls about 20 witnesses to prove something. Then automatically the defendant is put into the box and the defendant practically admits it. There is a practical waste of time. To prevent such a waste of time is the idea in the suggestion.

A. We have got a provision in the Civil Procedure Code now to administer interrogatories. That can be done.

Q. In the mofussil, in your experience, do you think that the rules about discovery are generally followed or they can be made to be followed ?

A. There is no difficulty. But they are not followed. Even the judges are loath to grant it. I put in 3 petitions for discovery in an original suit. There is some idea that discovery is something special and that it ought not to be granted.

Q. Do you think that the purpose will be served by the use of interrogatories at the proper stage of the case ?

A. If it is only enforced in the courts, there will be no difficulty.

Mr. Sastri.—*Q.* You have had practice practically from Ganjam to Tuticorin and in the west coast as far as Arabian sea.

A. I have had fairly large practice in the mofussil.

Q. You have appeared before most of the sub-judges in the districts.

A. Yes, before a good number.

Q. What is your view as to their efficiency ?

A. They are quite as good as some of our High Court Judges. I mean in point of mere mental calibre.

Q. You have nothing to complain against their capacity for work or for deciding cases.

A. Absolutely not. There may be an exception. I am giving only my general impression.

Q. You are satisfied with their work.

A. Yes.

Q. What is your opinion about the direct recruitment from the Bar to the judiciary ?

A. My feeling is this. I am for recruitment to some extent from the Bar. But I find that there are practical difficulties in the way. If it is a question of theory I am for a judicious administration of both recruitment from the Bar and recruitment from the munsifs. But when once there is a feeling that anybody may become a subordinate judge and will be placed over your head, I am afraid there may be a slackening of energy on the part of the munsifs. That is what I am thinking of. Therefore, unless there is a very fairly large number open to the provincial civil service I would not put the direct recruitment from the Bar as a fetish at the expense of the munsifs.

Q. Taking matters as they stand, it takes 16 years for a munsif to become a subordinate judge. If you import one-fourth direct from the Bar then you will increase the period from 16 to 20 years. Would it not tell upon the spirit of the present officers ?

A. That must be the paramount consideration of the Government and they should see that nothing that they do will impair the efficiency of the present officers of the judicial service. I am for recruitment from the Bar provided that the present state of affairs is not seriously impaired with.

Q. You would have heard of two direct appointments made during the last 30 years, and could you not get such a class of men from the service ?

A. Yes.

Q. Unless you are satisfied that the persons are far superior to the persons promoted from the service, I suppose you would not advocate direct recruitment.

A. It is a different principle altogether. Occasionally you should see that some fresh element is imported.

Q. Have the present imported men been in any way of such a high calibre as to infuse a high idea in the mind of others to emulate them in any way ?

A. Unless it is tried for a particular time you are not to draw inferences like that.

Q. Are you aware that there is at present a feeling in Madras that this direct recruitment is not likely to attract the best of men ?

A. Yes. It may not always be the right sort of man but one that frequents the Government house may get in. There is that danger. I do realise that.

Q. If the appointment is entirely left to the High Court, you would have no objection.

A. It is not an advisable thing. That raises a large question as to the responsibility of Government. I don't think the judges ought to be dragged into the mire of communal squabbles.

Q. As matters now stand, would you allow the present state of things to continue?

A. Yes. If it is possible to have recruitment to some extent from the Bar I should have it.

Mr. Sastri.—*Q.* As to the recruitment of district judges, are they recruited in this Presidency from the Bar ?

A. Yes, but very few.

Q. How many ?

A. Two or three.

Q. What is your experience of those directly recruited from the Bar ?

A. I can't say.

Dr. DeSouza.—*Q.* Comparing district judges recruited from the civil service with appointments directly from the bar, which do you consider more desirable ?

A. I have decided views on this matter. I do not want that any one should be appointed who had nothing to do with law and had no legal training. I don't believe in the Civilian element to continue. I do not know whether it is within the range of practical politics.

Q. If Civilians are trained as subordinate judges and munsifs, you will have no objection ?

A. I don't think why special people should be brought and given the training at a great cost, when we can get capable people in this country as well. I don't want to go into that question. So far as I am concerned I believe that the time has now come that trained elements alone must take up the question of administration of justice in this country and the principle followed in the High Court ought to be abolished.

Mr. Justice Stuart.—*Q.* What is your experience in the district courts as to the admission of documentary evidence ? Do you find the rules are in any way kept reasonably, or are they more or less ignored ? What I mean to say is, do they file documents at the right time or at any time ?

A. They are not permitted to file at any time they like. I will tell you the practice. There is a double procedure in the Code. Filing the list in advance, that is before the stage of hearing. So far as this is concerned no judge worth the name would allow the documents to come in at any stage. So far as registered documents are concerned there is some leniency. Documents are sometimes admitted even during the course of the trial. If they are public documents they are accepted, but if they are not public documents they are rejected unless very strong reasons are shown.

Q. Well, I happen to know a case that came up in a Madras Court. I will not give names. I want to know if such a thing often occurs. It was a suit brought by reversioners to the property of the deceased on the death of a widow, to set aside an alienation. The principal defendant's defence was that he had been adopted by the husband of the widow. The suit was instituted on the 18th August, 1918. He had his written statement filed fairly soon and he asserted in his written statement that there was a will in his favour. Now the issues were fixed on the 20th January, 1919. The suit did not come off for hearing for some time. *On the 5th September, 1919* the defendant was permitted to produce the will on which he relied. It was found afterwards to be forged. Is a thing like that likely to occur very often ? I think you will agree with me that it is most scandalous that the court should have allowed him to introduce a document at that stage.

A. It is quite an exceptional case. The ordinary practice is that they make an exception in the case of registered documents and public documents.

Chairman.—If there can be no real question about the genuineness of the document, then they admit.

A. Yes.

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR, Vakil, High Court, Madras.

Written Statement.

I would suggest, as the reasonable period for pendency of (A) original suits in the High Courts, in commercial cases three months and in others 6 months, for

first appeals one year, and for second and miscellaneous appeals six months; in the case of district courts and sub-courts, for money suits three months and suits wherein questions of title are to be decided one year, and for appeals six months, and civil miscellaneous appeals three months, and for small causes three weeks to one month.

In the case of district munsifs' courts, for original suits relating to money and rent three months, and in the case of suits requiring determination of questions of title and other cases nine months, and in small cause suits one month, and for claim proceedings three months.

(B) Direct recruitment from the Bar to the different grades of judiciary officers will have the effect of increasing the efficiency of the judiciary and thus speeding up proceedings to the extent that such speeding up may be due to an efficient judiciary. A short period of training may be desirable in the case of district munsifs to familiarise them with the work that they have to do. That can be done by attaching them to experienced munsifs.

There is something to be said for the view that the concentration of many courts in the same place tends to delay disposal of cases.

I will not propose any change in the jurisdiction of courts except that in the case of district munsifs I will increase the pecuniary limits of their small cause jurisdiction to Rs. 200.

Sub-judges may well be invested with jurisdiction to try probate, succession certificate and guardianship proceedings and land acquisition cases as I believe they are quite as competent as district judges to deal with such cases.

I think it is not a safe experiment to invest sub-registrars with jurisdiction to try cases.

I am not for curtailing the right of appeal as at present obtaining. I would even suggest second appeals being allowed where, on questions of fact, the lower courts differ.

While it cannot be denied that frivolous appeals are being filed, I do not think that such appeals are so large as to call for a new and special remedy.

I think the suggestion of insisting upon the decretal amount being deposited before a second appeal is allowed to be filed will work very hard in practice.

In the High Court the powers given under Order 41, rule 11 are regularly exercised. As in the case of second appeals, in the case of revision petitions also, it has to be stated that they are sometimes filed without substantial grounds, but these petitions may be reduced to reasonable proportions if interim stay of proceedings on *ex parte* applications is granted only in cases where but for it miscarriage of justice is sure to ensue.

As regards the serving of notices on defendants the help of the village officers should be made obligatory and they should be compelled to record what they have done.

I do not approve of the provision of section 106 of the Transfer of Property Act being applied to civil suits. Duplicate of the summons may however be sent to the defendants by registered post.

Generally the forms of the Civil Procedure Code are adhered to. In cases where the plaint is very badly framed, the court may have the discretion to reduce the pleader's fees.

The judges must frame the issues themselves instead of leaving it to the parties to do so and mechanically approving of the issues framed by them.

More regular and liberal use of the powers under Orders X, XI and XII will reduce perceptibly the time taken in the actual trial of suits. The reason is mere inattention and negligence, but I am against the examination, when the issues are framed, of the parties as a part of the trial. The orders under Orders X, XI and XII may be made when the issues are settled. Provisions of Order 16, rule 16 may be more largely availed of than now. With some care in the fixing of dates

of hearing the application of the provisions of this rule will lead to considerable saving of time in the trial of suits as the delay due to the absence of witnesses can be avoided. No hard and fast rule can be laid for the letting in of oral evidence. A great deal depends upon the pleaders conducting the cases and the presiding judge. Cases are rare wherein oral evidence known to be unnecessary and irrelevant is let in. The uncertainty of law has also to be taken into consideration in determining what latitude can be given to practitioners in the letting in of oral evidence. Unless greater care is insisted in the preparation of affidavits and they are better scrutinised by the presiding judges, they cannot effectively take the place of the oral evidence let in before the court. The proceedings wherein they are prepared to be utilised are important and lead to consequences of great moment to the parties concerned. I would prefer the existing practice to continue.

I am altogether against a time limit being fixed for the examination or cross-examination of witnesses. It is the party and his pleader that are expected to know what his witnesses are likely to state and what can be elicited by cross-examination of the witnesses for the opponent.

I would not extend the application of Order 37, Civil Procedure Code. I do not think that the duty should be cast on the legal representative of a defendant to come in and ask to be joined as a party to the suit.

I think appreciable time will be saved if guardians are appointed by adopting the procedure suggested. If none of the proposed guardians agree, it must be understood that the alternative will be the appointment of an official of the court as the guardian.

I think the practice of granting *ex parte* injunctions and orders is being misused and the only way of preventing the misuse is by its being made the rule in actual practice to refuse *ex parte* orders unless very strong reasons exist for issuing the *ex parte* order.

It of course depends upon the individual judges whether their judgments are long or short but I do not think there is a practice of writing long judgments so as to call for notice and action.

Sometimes points of law or of defence going to the root of the case are disposed of as preliminary questions. This practice may perhaps be more largely resorted to. The judges themselves, as a rule, fix the date of hearing. Pleaders are usually consulted in fixing the dates for the examination of the witnesses and the hearing of arguments. I think that practice conduces to despatch of business rather than causes delay. I do not think that the use of the provision relating to the examination of witnesses has been so misused as to call for any restriction being imposed on the facilities that litigants at present have in this direction. It is no doubt the case that commissioners cannot refuse irrelevant questions to be put as judges can but I do not see how the evil can be avoided except by the commissioner being made a judge so far as the particular witness is concerned. No doubt interrogatories may be administered and then the judge who sanctions the examination of a witness on commission has the opportunity of deciding how far they are relevant but if a party is willing to examine a witness *viva voce*, I do not think he must be refused the opportunity of doing so. It sometimes happens that witnesses examined on commission are very important witnesses. Perhaps a *via media* may be found by making the administration of interrogations the rule and taking the judge's directions when it is proposed to examine a witness otherwise than by interrogatories.

Affidavits are asked for in some cases where adjournments are applied for. I cannot say that payment of the costs of adjournment is found a sufficient deterrent against unnecessary applications for adjournments.

In many courts trials do not go on from day to day as contemplated in the question. The reasons are partly the unpreparedness of the parties and partly the congestion of the work of the courts and partly the convenience of witnesses who cannot afford to be out of their homes for days together. I would insist upon its being made the rule in practice that a case once taken up should be proceeded with

until it is finished and if in any case this rule is to be departed from, the reason must be given by the judge for the departure.

I am afraid that the High Court does not exercise proper supervision over the district judges in the matter of securing due inspection of the lower courts. More frequent inspections by district judges and tours by High Court Judges to the mofussil, to see whether the Code and the rules thereunder are properly observed, will go a large way towards securing quicker despatch of business.

I am for adopting the suggestion made in question 55, but as for the suggestion in question 53, if execution be had in another court than the one that passed the decree, provision must be made for the executing court keeping the court that passed the decree informed of what is being done, and as regards the suggestion in question 54 care must be taken that only one court functions at a time so as to avoid multiplicity of proceedings and possibly conflicting decisions on one and the same matter.

I am not for curtailing the period prescribed by Section 48 of the Civil Procedure Code or article 182 of the 2nd schedule of the Limitation Act. I would suggest that applications for execution of the decree be not made compulsory once every three years just to keep the decree alive. But if the above suggestion be not adopted, the starting point for the purposes of article 182 should be, not the date of the previous application for the execution of the decree but the date of the order on the last application. Having obtained the decree, the decree-holder is not likely to be slack in obtaining the fruits of the decree and if he is unable to execute the decree it must be on account of reasons beyond his control. I am not for any change in the law as embodied in section 66 of the Civil Procedure Code. The habits of the people are too deep-rooted for a change to be expected in them by a mere change of the law, and injustice is sure to result. The suggestions made in questions 58 and 59 may be adopted but I am not for deleting the 2nd proviso to rule 16 of Order 21. Sometimes defendants on account of quarrels amongst themselves try, some of them, to secure advantages over the other defendants. Order 21, rule 21 may be retained just to draw attention to the fact that the court is not bound to grant execution against the property and the person of the judgment-debtor at the same time.

As regards the suggestions made in question 61, the judgment-debtor knows whether the decree against him has been satisfied or not and the notice may form part of the notice of execution but as regards the legal representation of a party to the decree previous notice to him is necessary so that he may be apprised of the execution of the decree and may decide what his course is to be as regards it. Execution of decree does not stand on the same footing as the trial of a suit and I would not dispense with notice to the judgment-debtor to settle the terms of the proclamation of sale and notice of the application by the decree-holder for leave to bid. Ordinarily the engagement of the pleader by a party terminates with the passing of the decree and there may be a long interval between the date of the decree and the application for execution of the decree. To make the refusal by the vakil tantamount to refusal by the party will work injustice.

Arrests by village officials will lead to abuses and I would not advocate the adoption of such a system.

As regards the suggestion in question 66, I am for adopting clauses (*a*), (*c*) and (*d*). As regards (*b*) it may be that some of the mortgages noted in the encumbrance certificate have been discharged in which case those mortgagees are not necessary parties. Omission to implead all the mortgagees mentioned in the encumbrance certificate must not therefore entail the dismissal of the suit. The obligation may however be cast on the plaintiff to make the mortgagees mentioned in the encumbrance certificate parties with liberty to him to explain why the obligation is not discharged in particular cases.

I do not think too much time is granted by the preliminary decree for the payment of the amount decreed. I think the grant of time is necessary as it is a serious

matter to the judgment-debtor to lose his properties if the money be not paid in time.

I think that sometimes execution proceedings are protracted by orders staying proceedings made by the appellate courts. The remedy is the appellate courts being enjoined not to grant stay except in cases wherein they are clearly satisfied that injustice will otherwise be caused.

The suggestion in question 68 that the money decreed should be deposited or security taken may be adopted.

I do not think that the absconding of judgment-debtor is such a prevalent evil as to call for any special provision being made in respect of it.

Mortgage deeds may stand on the same footing as other deeds as regards their proof.

Except that the time for redemption of mortgages may be cut down to 30 years. I do not suggest any changes in the Law of Limitation.

I do not approve of the suggestions contained in questions 76 to 81. The paramount consideration is that justice should not suffer and I fear that it will suffer if the suggestions contained in the above questions are adopted.

The court-fees now levied are high enough and I would not favour any further increase in them.

The multiplication of reports does lead to embarrassment in the speedy disposal of suits.

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR, called and examined on Saturday, the 2nd August 1924.

Chairman.—*Q.* I think you are a vakil of the High Court ?

A. Yes.

Q. You have been good enough to give us your statement on some questions in the questionnaire ?

A. Yes.

Q. Never mind the questionnaire for the moment. We are not frightfully fond of it. It only represents the first impressions of the questions we ask. Would you mind putting it in your own way ? Are there any respects in which you think we might recommend a change of procedure ?

A. So far as change of procedure goes there are I think two or three ways in which you can expedite disposal of cases in original courts.

(1) By making sure that the service of process upon the defendant is done as early as possible.

(2) By seeing that the cases come up for trial as quickly as possible, and points ascertained properly before the trial comes off.

(3) When once the trial is taken up that it is gone through as quickly as possible. So far as service of processes is concerned, I think we can utilise the services of the village officers much more than these are being done now. Certain amount of statutory liability may be brought to bear on them for the purpose of service of summons. So far as the assortment of points are concerned which are to be adopted in the trial, a more liberal use of the present provisions has to be made so that judges really bring their minds to bear on the cases, so that points of differences between the parties might be minimised and cleared. Documents should not be admitted at all stages to prevent further development which might be due to the ingenuity of the party or of those helping him. In the mofussil particularly, cases are not taken up on the date appointed for them. In

consequence of these adjournments nobody is sure that the case will be taken up for hearing. There is slackening of work and the result is that at the time when the trial actually comes up the parties do not come. I don't think this will be set right by any change of rule. It is more the practice of the rules that is important.

Q. You explain the first one. Who are the village officials in this part of the world and how would you utilise their services so far as work with the civil court peon is concerned ?

A. I am not speaking of the towns now, but of the villages. There is a village Headman or Grama Manim who is literate or not and the Karnam who is always literate. It must be the duty of the process-server to go to the village manim and he will be able to identify the party. Often it so happens that the defendant manages to get the process-server to say that he is not able to find him. As a matter of fact he has been found, and that causes delay. Sometimes the defendant himself serves the process on somebody else, particularly if he is a stranger to the place, and if he goes to the village headman there cannot be any mistake as he can identify the man. He is also somewhat more disinterested than the parties, and the chances are that you will be able to fix the right person and get him served as quickly as possible.

Dr. DeSouza.—Q. I understand that in this Presidency process-servers have been supplied with instruments to take the thumb impression of the defendant. If that was one of the objections that you point out of service being effected on the wrong person that could be easily avoided. Would not that be so ?

A. Yes.

Chairman.—Q. Do you suggest that service on the defendants should be made in the presence of the Headman and that the Headman should attest it.

A. I think it is the best from all points of view.

Q. I take it that as to the use of the post in connection with process serving, you would probably use it as an additional check and not as a substantive matter.

A. It might be used in interlocutory matters.

Q. Now as regards the use of orders about discovery in the mofussil courts, I take it that in this province as in others the person who goes to a pleader to have the written statement filed very often does not go to the same man when the case is coming on for trial. Is that so ?

A. I do not think it is quite the accurate state of affairs here. It all depends on the intricacy of the case and the interest a client takes in his work.

Q. Does often one pleader file a written statement and another pleader is engaged in the hearing ?

A. That is not usually the case.

Q. We have been told that the Orders as regards discovery, etc., are little used in the mofussil. Is that to some extent due to the fact that a pleader is not really engaged and paid for looking after the case ?

A. I don't think it is correct. I think a pleader is usually engaged for the whole case.

Q. So he is really in charge of the preparation of the case.

A. Yes. It may be that when a case is started there is only one gentleman and his services are supplemented by others, but it is not usually the case that one pleader starts the case and then his services are dispensed with.

Q. Do you think that pleaders require higher fees or special fees for the purpose of interlocutory applications ?

A. I don't think so.

Mr. Sastri.—Vakils are paid only one fee. That one fee covers the conduct of the whole case.

A. Yes.

Chairman.—*Q.* You say that the practice of granting injunction *ex parte* is being overdone and I suppose you often see a case where a man has a fairly good ground for asking an interlocutory injunction but has no reasons for asking that order *ex parte*. Sometimes judges do not sufficiently notice this ?

A. Yes.

Q. The question whether there is an irreparable damage has got in most cases to be looked at very carefully ?

A. Yes.

Q. Do you think that any good can be done by the district judge's looking at the end of the month whether the *ex parte* injunctions granted were really necessary?

A. I do not think I would recommend this. He should not specially look into the munsif's work for this purpose but he can check this also at the time of his inspection which is done once a year and my belief is that a little supervision by the district judge will have a great weight and will equalise the time of the pendency of the suit and also help in the expedition of the work of the lower court.

Q. You say in many cases trials do not go day to day ?

A. Yes. In some cases it is rather inconvenient—especially in long cases.

Q. Can you tell me how many reserved judgments a district munsif will generally have ? Do you think that district munsifs generally keep cases in which they write judgments afterwards ?

A. That depends on the person concerned. They do keep cases to write judgments for weeks and in some cases they give their judgments soon.

Q. Will a man have 20 judgments to write ?

A. Yes.

Mr. Viswanath Sastri.—One district judge has 250 judgments still to write.

Chairman.—*Q.* Is he on leave ?

Mr. Sastri.—No, still working.

Chairman.—*Q.* What would be the ordinary figure ?

A. I believe between 5 and 10.

Dr. DeSouza.—*Q.* Would there be many pending for more than a month ?

A. If they are very complicated cases.

Q. I suppose a return has to be submitted to the High Court showing how many judgments are pending ?

A. It is not so.

Q. I see you are against any attempt to interfere with *benami* transactions and you say you are not in favour of any alteration in section 66 of the Code. The suggestion is that it should apply to defendants too. Do you have any objection to making section 66 apply to the defendant as to the plaintiff ?

A. I see no objection.

Chairman.—*Q.* You think that the judgment-debtor ought to have a separate notice for the purpose of settling the terms of the proclamation ?

A. I think so.

Q. Do you not think that a good deal of difficulty arises from constantly serving the judgment-debtor in execution ? Would you be in favour of giving him one notice at the beginning of the execution and making him to attend at all the other stages ?

A. I would like the judgment-debtor to be finally informed of the terms of the proclamation.

Q. If the notice that was served on him was the notice stating what the execution was about, that a particular property was asked to be sold and for so much, that he was not required till settlement of proclamation, that is, if he was given

full notice on the summons as to what the steps would be, then you think that first service is enough ?

A. Yes.

Q. And then when the proclamation is settled and the judgment-debtor takes part in the settlement, you would be in favour of seeing that there is no question raised afterwards, that by reason of proclamation there has been a material irregularity and that it has led to lessening of the price ?

A. Yes.

Q. Then you say that execution proceedings are protracted by stays that are granted for insufficient reasons. I take it that in execution matters appeals are very often filed ?

A. I cannot say very often but I would say that they are filed in substantially large number of cases.

Q. Do you think that in that class of cases and having regard to the fact that appeals are generally first appeals in the district courts, no good use could be made of Order XLI, rule 11 ?

A. I am afraid I have wrongly understood your first question. I thought that you were referring to appeals in execution, but in the case of first appeals from the decisions in the original suits, I do not think that appeals are filed in any large number of cases.

Q. What I meant is this. An appeal is filed from an order made in execution. It is really a first appeal and it will usually come first before the district judge or the subordinate judge. In those cases do you think that of these appeals some could be weeded out by use of Order XLI, rule 11 ?

A. I believe so.

Q. Are they in fact regarded from that point of view ?

A. I do not think so.

Q. Have you ever thought of the question of second appeals, as to whether any improvement could be made from the point of view of giving rather better protection to the respondent in the first appellate court ?

A. I was hearing the discussion that was going on with the first witness. Theoretically there is a good deal to be said in favour of the view that you take, but I cannot say whether in practice it would work well. Perhaps the only kind of restriction that could be imposed will be this. To prevent second appeals in cases where the value of the property is less than rupees five hundred, they should be put on a par with the cases of small cause nature. That is no doubt a workable idea but, except that, I am afraid no other kind of restriction will really be possible in practice.

Q. Your suggestion is that you should take the figure five hundred and stop all appeals in certain class of cases?

A. I mean in cases which can admit of valuation. The case which I have prominently in view is that of the land, whose market value is not more than rupees five hundred. If no suit of Rs. 500 is to be made liable to second appeal I do not think that land cases, merely because the subject matter is land, should be made liable to second appeals.

Mr. Radhakrishnaiya.—The land has a value apart from the money value.

A. I quite realise that. I quite understand that there will, no doubt, be some hardship, but after all, if any further progress has to be made it can be made in that direction and that is the only direction that I can suggest.

Q. With regard to land, five hundred should be the real market value ?

A. Yes.

Chairman.—*Q.* Do you think that it would be possible to strengthen the first appellate courts in cases under rupees five hundred in value, so as to enable you to make their decisions final, subject perhaps to a right to state their case or a

difficult point. If such courts of appeal could be constituted, not of the subordinate judges who happen to be there immediately, but of the specially selected senior subordinate judges, do you think that they will make a satisfactory tribunal for the smaller type of cases ?

A. If you take it by itself I do not think that I can say much by way of criticism. You have now a case of first appeal and second appeal and for this the proposal is to substitute two judges making their decision final—two judges for the first appellate court. I do not see what exactly the advantage is except that it would shut out the second appeal. You have to take an additional judge even for the purpose of first appeal on this proposal, so that you have one judge who does exactly the same work as the second appellate judge is going to do. Then it may be said that because the cost of the first appellate judge is much less than the cost of the High Court Judge, there will be a financial gain.

Q. First of all you see the first appellate court is at present one judge and his decision has to be made final on facts, even although he reverses the decision of the munsif. If there are two judges instead of one, it would be more defensible to make their view final on facts if they disagree with the munsif. You get a better tribunal of first appeal on facts. Secondly, if you can get a sufficiently good appeal on law to entitle you to make that final, then instead of the whole matter being hung up in the High Court for another year or more, however long it takes to do a second appeal, and instead of a great many people being unnecessarily put to trouble and expense as respondents in appeals that ultimately fail, cannot all this be wiped out and saved ? I think you will agree with me, if you could only afford to give people a sufficiently good appeal on fact and law early enough, that ought to be our great ambition. Instead of putting a case through a succession of bad courts and ultimately giving them the High Court which is final, merely because there is nowhere anything else, let us give them a good court of appeal and give it to them at once.

A. I follow. But what I think is that that will necessitate an increase in the number of judges.

Q. It may necessitate an increase in the number of subordinate judges but it might enable you to allow for a diminution in the number of High Court Judges.

A. I am not sure. I must confess I don't see that that procedure is quite so advantageous over the present one that I would suggest the adoption of it.

Mr. Justice Stuart.—Q. Would there not be a great advantage in speed ?

A. Yes, in the sense that finality is secured.

Q. At the present moment when a man files an appeal before a district judge he has got to take his chance as to when it is going to be heard. And I think I am right in saying that he is lucky if he gets it heard within a year of filing it.

A. Yes.

Q If you put on these Benches, they would be doing no other work and there would be no reason why the appeal should not be heard within three months after filing and finally decided. Would that not be of enormous advantage ?

A. That will be so.

Q. What we are thinking of is the interests of the litigants and not of the Government's finances. I picked up a case at random and you see how this works out. Here is one of your High Court second appeals. The suit was instituted on 13th November 1914. The munsif decided it on 26th October 1917. The lower appellate court decided it on the 23rd August 1918. The second appeal was presented on 17th April 1919 ; and I find it was decided on the 29th March 1921. These unfortunate people had been waiting for the last 7 years, and the result of it was that the case was sent back for rehearing. Don't you think we ought to make considerable efforts to put a stop to this sort of thing ? Don't you think it is almost approaching a scandal ? What is the valuation ? Rs. 152 and what is the stamp duty paid? Rs. 2-0-0. 7 years have been wasted already and now it has come back for rehearing.

A. Yes. I think it ought to be remedied.

Mr. Sastri.—Q. How will this change be received by the public ?

A. I am not sure the public would consider the institution of a Bench of two Judges as a sufficient compensation for the loss of second appeal.

Dr. DeSouza.—Q. What are your reasons for saying that the public will be dissatisfied ?

A. Because the general feeling is that the best justice that you could get is in the High Court.

Q. We have had the evidence of the Bar—very eminent witnesses—that the gentlemen who occupy the posts of subordinate judges do their work quite satisfactorily and are capable of duly discharging the duties of the judges of the High Court.

A. My suggestion does not conflict with the correctness of the other statement. So far as the parties are concerned, they do not feel satisfied until the final pronouncement is made.

Q. Do you think that the experiment, if tried, will be a success ? Granting that the personnel of the subordinate judges to be appointed will be such as to dissipate the time-honoured belief that the High Court alone will grant the best justice, do you think the experiment is worth trying ?

A. It is worth trying.

Mr. P. W. PARTRIDGE, Solicitor, Madras.

Written Statement.

I have read the numerous questions contained in the questionnaire and find there are many I am unable to answer, and those that relate to the procedure of the district courts I am not competent to deal with. I therefore propose to make the following general comments on the position of the Courts in Madras, that is to say the High Court, city civil court, and small cause court and to make a few suggestions as to the steps that might be taken as the possible remedy for the delays which undoubtedly exist, and the improvement of the administration of the courts.

In the first place it is I think generally admitted that the time taken for the disposal of suits in these courts is very long and the difficulties and delays that occur in completing execution proceedings in respect of any decree that may be obtained are much greater than they should be. Speaking generally the chief cause of the delays that now occur appear to be due to insufficient judges, and more particularly to insufficiency of the senior officers and staff employed under them.

With regard to the High Court the most serious arrears are to be found on the Appellate Side, although it is most unusual for a simple suit filed on the Original Side to be posted for final hearing within 6 months after it has been filed. The usual period is 12 or more than 12 months. Dealing with the Original Side of the High Court I am convinced that immediate steps should be taken to provide that Judges sitting on the Original Side, who are highly paid officers, should be relieved from doing interlocutory work and attending to small matters such as issuing notices, fresh summonses, commissions and the usual procedure necessary before a suit is ready for final hearing.

I consider that a Judge's time should be taken up in the actual disposal of suits themselves, or the disposal of important interlocutory matters involving questions of law or procedure which cannot be dealt with by subordinate officers. Apart from this all other interlocutory matters necessary to bring a suit for trial should in my opinion be disposed of by masters in chambers who at present do not exist in Madras or to the best of my knowledge anywhere in India, but are to be found in the Supreme Court of Judicature in London. These masters must of course be fully

qualified and experienced officers, and all chamber work should be attended to by them, unless it is adjourned for trial into court either on the application of either of the parties or by the decision of the master himself. The court should have a power of revision of any order passed by a master on a certificate applied for and granted by the master that the matter was a fit one for revision. If a certificate was refused the party should be allowed to apply in open court. If the right person is appointed master I do not think there would be many cases where his order would be disputed.

The appointment of such masters necessarily means that the junior staff will have to be largely increased, for in my experience the present junior staff on the Original Side is not competent as matters now stand to deal with the mass of work entrusted to them. This statement is I think borne out by the exorbitant time it takes to obtain a copy of an order, judgment, decree, letters of administration or probate and similar documents in legal proceedings pending in the courts.

The work of the masters can be delegated without legislation under section 128 (1) of the Code of Civil Procedure. Their work would be regulated and separate cause lists issued as if they are sitting in court as a judge.

I do not consider that the appointment of masters would mean extra expense, for although the salary of such an officer should not be less than Rs. 3,000 a month the necessity of one or perhaps two extra judges would be avoided, which in itself would mean a considerable saving in the shape of salary. The fact that a junior officer or assistant registrar would no doubt have to be appointed to work under the master on a salary of say Rs. 750 rising to Rs. 1,000 must not be lost sight of, but more registrars on higher pay will have to be appointed if additional judges are created. I am also strongly in favour of creating a special separate department to attend exclusively to all insolvency matters which I understand are greatly in arrears and certainly require more specific and careful supervision.

These remarks with regard to interlocutory applications do not of course apply in the same degree to the Appellate Side and the delay in that department appears to be chiefly due to insufficiency of judges, and also to the length of time it takes for the preparation of the printed pleadings and papers before they are ready to be placed before the appellate bench for final hearing. This I presume is due to insufficiency of staff and clerks who attend to the preparation and the printing of the records.

So far as my experience goes it is most unusual for the printed papers in any appeal which are printed by the court to be ready within 9 months after the appeal is filed and admitted.

With regard to the city civil court the delay in the trial of suits in this court is beyond comment. There is only one judge and I understand that cases filed in 1922 are still awaiting disposal.

With regard to the small cause court I am not in favour of enlarging its jurisdiction. The chief object of this court is that simple suits should be speedily disposed of, but I am afraid this is far from the case. Three judges would appear to be sufficient in view of the fact that the larger proportion of suits in this court are on promissory notes and other claims for goods supplied, to which there is generally no real defence.

In addition to suits of this class the chief judge is the officer appointed to try matters under the Land Acquisition Act and also questions of taxation under the City Municipal Act. Both these matters, which often involve very important questions of law and large sums of money, should I consider be tried by a judge on the Original Side of the High Court.

The registrar and the subordinate staff are not in my opinion competent or sufficient to deal with the mass of work in this court, and all the three judges in the small cause court waste considerable time in disposing of applications for fresh summons and other minor interlocutory matters in connection with suits, which could very easily be attended to by a competent subordinate officer such as the

registrar or a special master appointed to deal with these matters. Very frequently a judge is occupied for two or three hours each day in dealing with interlocutory matters before he is able to turn his attention to the actual trial of suits posted before him. These remarks also apply to the system now in vogue in the city civil court.

The delay in getting copies of judgments, decrees, execution warrants, etc., in both these courts is as bad, if not worse than in the High Court.

I am therefore of opinion that the present position could be vastly improved if there is a readjustment of the methods now adopted in order to bring suits to trial and provision is made for more efficient supervision over and enlargement of the staff.

Before leaving the small cause court I would advocate that the present composition of the bench to hear appeals should be altered so as to prevent the judge who has tried the suit at the first instance from sitting as one of the appellate bench.

A matter which is as serious as the delay in the trial of suits is the delay and trouble involved in effecting execution of any decree which a successful litigant may obtain. It can only be remedied by more efficient supervision. I refer to this question again later.

Dealing with the questionnaire in more detail, I see no reason why a straightforward case on the Original Side should not be ready for hearing within three months after the summons is served on the defendant.

With regard to Original Side appeals I see no reason why these should not be ready for trial within at the latest three months after the appeal is admitted, but as previously stated this entirely depends on the printing and preparation of the records. These remarks also apply to second and miscellaneous appeals.

I do not consider the right of appeal should be curtailed in any way thus removing a valuable safeguard to litigants.

The courts should exercise more often its rights to penalize parties, in the shape of costs, who put forward frivolous or vexatious cases, or who file appeals against orders in execution without any real ground and totally for the purpose of delay.

Time could be saved by abolishing issues in suits at the original hearing. They are not necessary and could be decided by the trial judge at the actual time of hearing the suit.

A rule could be passed directing parties to file the necessary affidavit for discovery of documents within, say, four weeks from the service of summons.

I consider that service of all processes on the legal practitioner whose name is on the record should be considered sufficient service for all notices either on the Original or Appellate Side of the court, thus avoiding considerable delays which now occur. I also consider the post office could be made more use of for this purpose, and the suggestion contained in question XXX of the questionnaire to be a good one.

With regard to mortgage suits I do not consider any time is necessary before allowing a mortgagee decree-holder to realise his security. His object in applying for a decree is because a mortgagor has failed to redeem his mortgage after demand has been made and defaulted in payment, and he should be entitled to enforce his rights at once. I consider a mortgage deed properly stamped, executed and registered should be accepted by the courts, without the necessity of calling an attesting witness to prove it, unless specifically directed to do so by the trial judge. I am not in favour of giving the small cause court jurisdiction over mortgage suits or partnership matters which often involve questions of great difficulty.

I consider the creation of a special commercial court to try commercial cases a most necessary and desirable innovation, one which will greatly relieve the present congestion on the Original Side. I wish to lay great stress on this point.

A great many of the cases filed in the High Court are what can be termed, commercial causes requiring special knowledge of accounting, commercial banking, company, and shipping customs and law.

A judge with special knowledge of these subjects should be set apart to try these cases and to sit continually in this court. He should be provided with a special registrar and staff, and the commercial court would in fact become a separate department of the High Court. This court might also be given jurisdiction over land acquisition matters and all taxation and company questions, particularly the latter. Rules will have to be framed defining what cases come within the category of "commercial causes."

In my experience the summary procedure now available to litigants in the High Court is of very little practical use. In nearly every case a party who wishes to delay matters has only to put in an affidavit raising questions disputing the claim to enable him to obtain leave to defend the suit. Although a counter affidavit is filed pointing out that the defence raised is absolutely unfounded and frivolous, it appears that the trial judge has no option but to grant leave to defend in order that the issues raised by the defendant may be decided. The defendant thereby obtains his object and the benefits of the summary procedure disappear.

I do not consider that delay is caused by waiting for members of the legal profession, although of course cases must occur when a leading practitioner is appearing in two or more cases posted on the same day in different courts in which his respective clients particularly wish him to appear. A leading practitioner nearly always appears with a junior who can take up and attend to work on behalf of and in the absence of his leader. A certain latitude has to be granted in these cases, which should not be abused by the practitioners themselves.

A great deal of delay is caused with regard to the appointment of a guardian *ad litem* referred to in question XLI. I would suggest that the court should be at liberty to appoint an official or practitioner of the court in all cases where a guardian is required without making it necessary to endeavour to serve the legal guardian or representative of the minor party.

I consider that the suggestion contained in question LIV to be an excellent one and if adopted will save the delays that now occur by the matter having to be referred back to the original court for orders on any question arising.

Execution Remedies.—I consider the court to which a decree is transferred for execution should have complete jurisdiction in all matters connected therewith. There are several ways in which this department can be improved which I will elaborate in my oral evidence. I would mention one feature of execution in the small cause court, namely, directly execution is sought the delinquent at once files application for payment by instalments which is almost invariably granted. All these applications which are legion, can be made without payment of court fees.

The point raised in question 77 appears to be covered by the contents of the proposed bill entitled The Registration of Business Names Act. I am strongly in favour of legislation on this point. When the Bill was first brought into operation in England I drafted a bill on the same lines but adapted for use in India and the Chairman of the Madras Chamber of Commerce brought it up for consideration by the proper authorities at the earliest opportunity. The matter was recommended to the Government of India but it has only recently been discussed and is I understand still under consideration. I believe there are strong objections to registering undivided Hindu families carrying on trading business, but if partnerships are registered under the provisions of an Act of this sort, the necessity of a registered deed of partnership is done away with and every one will know who are the individual persons trading under a particular name, and with whom they wish to enter into business relations. So far as third persons are concerned the personnel of a partnership only is required and not the conditions governing the partners *inter se*.

I am of opinion that all vexatious and frivolous suits should be penalized by awarding costs on the highest scale possible to the unoffending party and I do not

think enhancing court-fees will have any beneficial effect; in fact I consider the court-fees now in force are too high.

No distinction should be made between the method of the execution and completion of deeds which require registration. An agreement to enter into a lease should be enforceable without registration in the same manner as an agreement for sale.

In support of my statements that the delays in the courts in Madras are very serious I refer to the following case in which my firm appear for the plaintiff:—

The suit was filed by the United Planters Association of Southern India in the district munsif's court of Salem against The Roman Catholic Mission of Pondicherry by its agent Rev. Father Capelle and numbered 111 of 1917.

The plaint was filed on	10th February 1917.
Decree passed on	29th October 1917.
Appeal presented to the district court of Salem on	12th February 1918.
Decree passed on	3rd May 1919.
Application filed for copy of the judgment .	3rd July 1919.
Copy ready	6th July 1921.
Second appeal presented to the High Court Madras	28th July 1921.
Re-presented	14th September 1921.
Admitted	29th October 1921.

Appeal not yet heard.

I have also been informed by a practitioner that two suits filed by him in the High Court in 1920 have not yet been posted for hearing.

I also wish to call attention to the crowded and disorderly state of all the courts (except perhaps some of the appellate courts) and the corridors leading to them. It is frequently not possible to get a seat in the court in which a practitioner has work and the inconvenience caused by this fact alone does not tend to speedy and efficient work. The noise caused by spectators, loafers and others is also so great that one can hardly make oneself heard to the Judge.

The courts and their approaches appear to be used as a resting place for all and sundry and the portion near the city civil court is also being turned into a general market. The noise in and outside the small cause court is deafening. I sincerely trust that this disgraceful state of affairs will be speedily remedied by the usual methods.

Mr. P. W. PARTRIDGE, Solicitor, Madras, called and examined on Monday, the 4th August 1924.

Chairman.—You are a member of the firm of King and Partridge?

A. Yes.

Q. May I ask you first of all about the Original Side. I take it that one of the judges on the Original Side settles the issues at the beginning of the day.

A. They are generally taken up soon after the chamber work is finished.

Q. Is there any necessity for that? Don't you think it would be better in a High Court where the pleadings are presumably at least intelligible, that issues should be settled by the judge at the end of the plaintiff's opening of a case?

A. I think that the present system of settling issues is quite unnecessary.

Q. When the parties are ready for trial and have properly instructed their counsel and when it is known on what points they are in opposition, don't you think

that, after the plaintiff's case is opened, you can narrow the issues to the real ones much better than you can do a month in advance ?

A. I quite agree.

Q. The settling of issues is a horrible invention applied to the mofussil because the mofussil pleadings are supposed not to show what the issues are. When you get vakils and barristers in a presidency town, the issues in a case should appear from the plaint and written statement. If they do not show the issues it is better that they are thrown into the sea.

A. Yes.

Q. Would it save time if the judge would settle the issues at the end of the plaintiff's opening of a case ?

A. Yes. It will save time and also expense.

Mr. Radhakrishnaiya.—If issues are only settled after the plaintiff's case is opened, how will the parties be prepared with their evidence ?

A. From the pleadings they ought to know their case.

Q. Sometimes you know that the defendant may in his written statement deny every allegation in the plaint.

A. That is a very common form and they plead nothing else.

Chairman.—If at the stage of issues the judge goes into the matter carefully he can say that such and such issue does not arise even though taken in the written statement. He can confine the points at issue to a few of them so that the parties need not take the trouble of preparing evidence on all the issues.

A. Yes,

Q. If an issue is an irrelevant issue I suppose the defendant can take advice from the pleader.

A. Yes. I think so.

Q. The party in a High Court suit in the presidency town is supposed to be able to get legal advice. He is not supposed to be like a little villager in the mofussil.

A. Yes.

Q. Are too many cases posted for one day before one court ?

A. It is very difficult to say, because you get instances of a long list frequently breaking down before tiffin time. As far as my office is concerned, I have not found any inconvenience.

Q. I see you suggest that on the Original Side all interlocutory matters except those interlocutory matters which involve questions of law or procedure should be disposed of by masters ?

A. Yes, I think if masters are appointed to do this work, much relief will be given to the judges. In my opinion a judge's time should be taken up in the actual disposal of suits or the disposal of important interlocutory matters involving questions of law or procedure.

Q. At present a certain amount of that work is done by the registrar ?

A. Yes.

Q. What work do you think can be done by the registrar without troubling the judge ?

A. Do you refer to the present registrar or to the master whose appointment I have suggested ?

Q. I mean the master.

A. I consider the whole of the interlocutory work should be disposed of by him and the matters such as issuing of notices, fresh summons, commissions and so on can be very well attended to by him and such matters which are of great importance can be disposed of by the judges themselves.

Q. Do you think there will be sufficient work for the master on the Original Side ?

A. There will be quite enough work for him.

Q. How long does a judge take for chamber work ?

A. The whole of Monday, Tuesday and Thursday.

Q. And you think that a good deal of the work can be done by the master ?

A. Yes.

Q. And that a certain amount of that work, which is important and involves questions of law or procedure, should be transferred to the registrar, which is now done by the judges ?

A. Yes.

Q. And at present you say much of that work is done by the registrar ?

A. Yes.

Mr. Justice Stuart.—*Q.* You were saying that cases sometimes take five minutes only. How is it that they come on the list ?

A. Because the defence breaks down. The man starts with a defence but afterwards withdraws it and so the case is disposed of in five minutes time.

Chairman.—*Q.* Is there any procedure for obtaining summary judgment apart from Order 37 ?

A. No.

Q. You cannot get a summary judgment, as under Order 14 R. S. C. in ejectment suits ?

A. No. So far as I can see the present summary procedure has not had the desired effect. In nearly every case the party who wishes to delay matters has only to put in an affidavit raising questions disputing the claim to enable him to obtain leave to defend the suit. Although a counter affidavit is filed pointing out that the defence raised is absolutely unfounded and frivolous, it appears that the trial judge has no option but to grant leave to defend in order that the issues raised by the defendant may be decided. The defendant thereby obtains his object and the benefits of the summary procedure disappear.

Q. In Madras when an application for leave to defend is made under Order 37, is it made in the presence of the plaintiff or *ex parte* ?

A. In the presence of the plaintiff.

Q. Is that the rule ?

A. Yes.

Mr. Justice Stuart.—*Q.* How long does a case take from the date of institution to the date of final hearing ?

A. About two or three months.

Q. Suppose you institute a claim on the 1st January, how long will it take to dispose of it ?

A. If you get a special order it will be disposed of by March.

Q. That is not bad ?

A. No.

Chairman.—*Q.* As regards ejectment suits between landlords and tenants are they brought in the small cause court ?

A. Majority of them.

Q. And the small cause court makes an order while the defendant starts his specific performance suit in the High Court ?

A. I do not quite know. I think there is a provision.

Q. Is there any limit to the jurisdiction of the small cause court in cases between landlords and tenants ?

A. I do not know.

Q. Would you tell me please something about the commercial court. I understand you have four lists—one is commercial list, one is testamentary list, one is matrimonial list and one is general list ? How is the commercial list working ?

A. It is working all right, but so far as the present system goes, I think the work is sometimes hampered as there is no distinction between the commercial list and other lists. My idea is to have an entirely separate department of the High Court for dealing with commercial matters. A judge with special knowledge of commercial matters should be set apart to try these cases and to sit continually in this court. He should be provided with a special staff and the commercial court would in fact become a separate department of the High Court.

Q. Now who makes interlocutory orders in commercial cases ? Does the judge in charge of the commercial work make these orders ?

A. Yes. He is doing both commercial and ordinary Original Side cases.

Q. Do I understand that the judge who does commercial cases is doing other work as well ?

A. I think he is doing other work too.

Q. Perhaps there is not enough commercial work for one judge ?

A. I think there is. Majority of cases come within the catagory of commercial cases.

Q. Suppose there is a big commercial case which requires expedition, is there much difficulty to get the judge to give his whole day for this case ?

A. It is not easy.

Q. How long does a commercial case take after the institution ?

A. I cannot say.

Q. Would it be something like three months or nine months ?

A. Something like nine months or a year.

Q. I see you say that printing does not hold back the case but there are other reasons.

A. Yes on the Appellate Side.

Q. Both as regards the Appellate Side and the Original Side have you any trouble as regards the interlocutory orders which if made in the mofussil courts would not be appealable but if made here on the Original Side are appealable ? Has that given much trouble *i.e.* to say what is a "judgment," etc.?

A. I don't think so.

Q. Have you ever considered if any improvement or remedy can be made in this way, *i.e.*, to see in which case an interlocutory appeal is needed and in which it is not ?

A. I have not considered it.

Q. Do you follow in this province the Calcutta ruling in the case of the Oriental Gas Company.

No reply.

Q. Would you be content with the provisions of the Code as to interlocutory orders ? Or would you like to have a wider right of appeal ?

A. I should like to have a wider right of appeal, if possible.

Mr. Radhakrishnaiya.—*Q.* Have interlocutory revisions been many ?

A. Yes.

Chairman.—*Q.* Are they disposed of fairly quickly ?

A. Yes.

Q. Is much printing done in these cases ?

A. No.

Q. How long does it take in these days ?

A. 5 or 6 months.

Q. You complain of the city civil court where you say there is only one judge ?

A. Yes.

Q. You also say that 1922 cases are still waiting ?

A. Yes.

Mr. Radhakrishnaiya.—I don't think things are any better on the Original Side.

A. No, not at all.

Q. Cases of 1921 are awaiting hearing ?

A. I think so.

Q. The registrar prepares what is called a ready list.

A. Yes.

Chairman.—It is for the registrar to post it.

A. Yes. But sometimes cases in the ready list do not come on for some reason or another.

Q. But ought it not to be for the plaintiff to see that his case is set down for hearing ?

A. I think it is a very good thing but as a matter of fact it is not done now. We cannot do anything because the list is too big.

Q. But you must be entitled to have your case set down for hearing. Do you go on trying to give every case a hearing date or do you go on the prospective list and gradually take cases from that list ?

A. We have a prospective list.

Mr. Justice Stuart.—*Q.* What are the classes of cases that are being held up for years ?

A. They vary.

Q. Could they be commercial cases ?

A. They might be.

Q. Do not commercial cases get precedence ?

A. If they are put down as commercial cases they get precedence.

Chairman.—*Q.* I see you say that as regards the small cause court, you are not in favour of enlarging the jurisdiction and you say that its judges have to do a lot of work which their subordinate staff might do ?

A. Yes.

Q. Which they ought to do ?

A. Yes. Half the day is taken up by the judge in dealing with applications.

Q. Things like applications for fresh summonses ?

A. Yes.

Q. Do you find that granting of instalments is becoming a nuisance ?

A. Yes.

Q. When a person takes up execution he is generally met with a counter move in the way of an application to revise instalments ?

A. Yes.

Q. How do the judges treat these, do they hang up execution ?

A. The stay of execution is always granted.

Q. Will you be in favour of taking away from the small cause court the right of interfering with instalments after the decree, or to make them after the decree ?

A. I think it is very difficult for another court to deal with a matter like that.

Q. Let us come to the insolvency court. I think there is a good deal of insolvency work ?

A. There is tremendous congestion.

Q. What is the congestion, you mean that petitions to adjudicate are held up and not disposed of, or administration of these estates after adjudication is not got through ?

A. The administration is not got through.

Q. What is the practice in these courts, do they appoint a committee of creditors ?

A. Very rarely.

Q. Do you think that if creditors were very often made to take charge of their affairs, and to give instructions to the official assignee, that will improve administration ?

A. In some instances it may, but I do not think that it will improve matters in the majority of cases.

Q. What do you want to be done in these cases ? The court, I take it, has granted the adjudication order; it has left to official assignee the administration of estate and it is for him to give notice, collect money and distribute the dividend. What more could the Judge do ?

A. Lot of applications are made, which are never disposed of. I think there is not sufficient machinery in the hands of the court.

Q. Besides the Judge taking insolvency and his registrar.... ?

A. The deputy registrar fixes up the examination work on Friday.

Q. Is much use made of the private examination ?

A. I think it is.

Q. Now you say that there is some difficulty as regards the staff of the court system dealing with this matter ?

A. It lacks sufficient staff.

Q. You mean that the deputy registrar doing insolvency work has to do all sorts of work ?

A. Yes.

Q. Now as regards the official assignee's office, are you satisfied with that ?

A. It does not work well.

Q. Have you any representation to make as regards that ? I suppose we shall have to see the official assignee some day.

A. The whole thing must be taken in hand and taken out in a properly organised form.

Q. I suppose that official assignee has a good deal of work to do. Does he want any more clerks ?

A. Yes, more clerks and more rooms. The official assignee's room is full of rubbish. The whole thing is not in order.

Mr. Sastri.—The great drawback is want of speedy decision of applications to set aside alienation ?

A. Yes, these things come up at once. It takes a very long time for the official assignee to administer an estate. You never get the defendant and then the creditors are shy.

Chairman.—*Q.* When an application is made to set aside an alienation of that sort is it usually tried before the bankruptcy judge or are the parties referred to an original court ?

A. If it is an alienation relating to the mofussil they are asked to go to the mofussil. If it relates to an alienation in Madras, it is done here.

Q. As regards motions in court, how is that arranged ? Are all of them done by one judge or by two judges ?

A. Practically one.

Q. He is in charge of all the interlocutory work.

A. Yes.

Q. Does it not interfere seriously with his taking up suits for final disposal ?

A. Yes.

Q. Please tell me as regards service on the Original Side, have you complaints about the Sheriff's office ?

A. Yes, very often.

Q. Apart from original service, do the rules allow you to have the service effected by your own clerks ?

A. Yes.

Q. Do you desire any change of the rules in that respect ?

A. No. I am quite satisfied. In the country side the post office could be utilised to a greater extent.

Q. You would like to get an order for substituted service by a registered letter.

A. Yes.

Mr. V. Radhakrishnaiya.—*Q.* Would you like a rule allowing your clerk to serve summonses in suits ?

A. I don't see any objection.

Chairman.—*Q.* I think you have got a certain amount of cases under the Guardian and Wards Act.

A. Yes.

Q. When a guardian is appointed what is the practice ? Does the judge lay down any sort of scheme of expenditure for him or give him instructions as to on what lines he should proceed to administer the minor's estate ?

A. He simply has to file accounts. He can ask for orders as to the maintenance that ought to be allowed for the minor. It all comes in the routine work.

Mr. Radhakrishnaiya.—Unless he gets an order allowing him to appropriate the income for the maintenance of the minor he cannot do it. Ordinary investment he can do.

A. Yes. The guardian appointed for the property of a minor cannot deal even with the income of the property. It must come up for orders. He files accounts once a year.

Chairman.—I quite appreciate that he is supposed to file his accounts once a year. If it shows a balance no doubt he will be called upon to pay it to the court. In the meantime the ordinary income of the minor will be applied in some way or other to the minor's benefit.

A. The guardian cannot spend a single pie without the order of the court.

Q. At the time the guardian is appointed does the court say how much is the income and how much is to be spent ?

A. The court does not know at that time. The guardian must take the orders of the court then and there.

Q. As regards guardians *ad litem* have you any difficulty on the Original Side ?

A. A lot of difficulty. It tends to delay.

Q. Where is the delay ? Is it in serving the guardian or does he refuse to act ?

A. There is delay in both, and further, other people also come and object to the appointment. The difficulty arises only when you come to the execution of decrees.

Q. As regards applications in revision, I understand that it is only bad cases that go to the admission court and the rest are admitted straightaway. All that is done in the office of the registrar.

A. Yes.

Q. About interference in interlocutory matters, not less than 74 per cent of the admitted appeals fail and something about 20 per cent. succeed. It looks as if there is too free an interference with interlocutory orders.

A. Yes.

Q. Do you think it is possible to have a provision insisting on registration of business names.? I don't mean registering partnership deeds with any registrar of assurances but the people should go and deposit with somebody a list of partners. Do you think it will be practicable ?

A. I am strongly in favour of it. Some difficulty arises only in the case of undivided Hindu families.

Q. Do you think that such a requirement that they should register their business names and that a failure on their part to comply with this requirement would be considered a criminal offence would have some good effect ?

A. Do you mean to say that they will in that case be liable to fine ?

Q. Yes. Do you think that will be sufficient ?

A. Yes. But in the first instance it may be taken as a hardship.

Q. Under the English system they have to register their business names and to state who the partners are. Do you think that if they are told they will be subject to fine, it will be an improvement ?

A. This penalty will be a sort of lesson to them that they should not fail to comply with the provisions of the Act.

Q. I see you wish to call attention to the crowded and disorderly state of all the courts and the corridors leading to them except perhaps some of the appellate courts. Then you say it is frequently not possible to get a seat in the court in which a practitioner has work and the incovenience caused by this fact alone does not tend to speedy and efficient work. The noise caused by spectators, loafers and others is also so great that one can hardly make oneself heard by the judge.

A. Yes. The noise created by loafers and spectators who have no business at all is simply intolerable.

Q. If that is the case why do the judges not do something to put a stop to it ?

A. Not only they create noise but they also treat these courts as resting places. They come there to take rest. The courts and their approaches appear to be used as a resting place for all and sundry and the portion near the city civil court is also being turned into a general market. The noise in and out of the small cause court is deafening. There are so many people in the court that it becomes difficult to have ourselves heard by the judge. There are also many practitioners sitting there who have nothing to do in that court, especially new practitioners who have still to learn their work. They go to the court room in order to see how cases are conducted and how the chamber work is done.

Q. Is there any reason why chamber work should not be done in the chamber ? I understand the judge does his chamber work while sitting on the bench in the court room. Is the chamber work done in the presence of other people in the court room ?

A. Yes. The court houses have been in fact turned into a market.

Q. The judge can sit quietly in his own chamber and call people in each case one after the other and dispose them off quickly. People can enter by one door and leave by the other quietly and the work, I think, in this manner can be disposed of very quickly. That is done in English Courts.

A. In fact that is now done by the Chief Justice.

Q. Are applications regarding insolvency matters also heard in the presence of other people ?

A. Yes.

Q. No regard is paid to these matters although they deserve the utmost secrecy ?

A. They are heard before other people hanging in the court room. It is better if this sort of work is done privately.

Q. Then it means that the distinction between chamber work and court work is not understood ?

A. Not at all.

Q. When I came to Calcutta I found the same practice, but I did not follow it. But I do not think there has been any great improvement in Calcutta.

A. There are lots of people talking in the court room and it is very difficult to hear what the judge or the practitioners say.

Q. I find that attorneys and their clerks, especially junior ones, dislike that chamber work should be taken in chamber because if that work is taken openly then they can learn something and get instruction regarding interlocutory matters?

A. Yes.

Mr. Radhakrishnaiya.—*Q.* As regards the small cause court I find that under the old system three judges used to hear appeals ?

A. How can you have the same judge who heard the case.

Q. Do you think it will be better to have two judges, omitting the one who has tried the case ?

A. Yes, there must be some sort of appeal.

Q. As regards the High Court, one witness suggested that the Original Side may be abolished altogther ?

A. How you can begin your litigation.

Q. I mean the Original Side of the High Court. How will this suggestion be received by the Bar and the litigant public ? Do you think it will be possible ?

A. I do not see how you can destroy that in any way.

Chairman.—*Q.* He is talking about the Original Side of the High Court. Just as there is no Original Side of the High Court in the Punjab or just as the High Court, Lahore, has no original jurisdiction and every suit is instituted before a munsif or a subordinate judge, do you think that the Original Side of the Madras High Court can also be abolished ?

A. There are many important matters which must come before the High Court.

Mr. Sastri.—*Q.* Will you have any objection to increasing the jurisdiction of the city civil court to Rs . 5,000 ?

A. I would object so long as the present judge is there. I would have no objection had his predecessor continued.

Mr. T. R. RAMACHANDRA AYYAR, President, Vakils' Association, Madras.

Written Statement.

Period for disposal.

(1) The period ordinarily required for the disposal of the several classes of proceedings is as follows :—

High Court—

Original suits—

	Months.
(*a*) Commercial	4
(*b*) Others	9
City Civil Court Cases	9
First Appeals	12
Second Appeals	9
Miscellaneous Appeals	9

Mofussil Courts—	Months
Original Suits	12
Regular Appeals	6
Small Causes	4
Claim Proceedings	3
Presidency Small Causes	2

Causes of delay.

There can be no doubt that in the majority of the cases more time is taken for the disposal of the proceedings than is ordinarily required.

So far as the High Court is concerned this delay is in most part due to causes over which the litigants have no control. It is not an uncommon feature in the Madras High Court for cases being brought on for hearing more than a year after they had been made ready. In the case of First Appeals, it takes on an average more than 3 months for the office to call for the payment of printing charges and a period of more than six months is ordinarily taken for getting the records printed. In the case of second appeals a period of six months is allowed to elapse before they are admitted and printing charges are called for. It must be possible for the High Court to devise means whereby this inordinate delay in the aforesaid matters may be avoided. In the case of some second appeals and miscellaneous appeals, where both the parties agree to such a course, the printing of the records may be dispensed with and the cases set down for hearing with typed copies of records supplied by either party.

25. *Service of notices.*—In the case of the mofussil courts the chief cause of delay is the time taken in serving notices of suits on the defendants. It is a notorious fact that the process-server in the mofussil is easily made to return notices unserved on one ground or another. The suggestion that the process-server should always report himself to the pleader of the party on whose behalf he is taking out a process for service so that the pleader or the party may assist him in finding out the person to be served is a good one and ought to be adopted. In every case of an unsuccessful attempt at serving the first notice, it must be made incumbent on the process-server to obtain an endorsement on the summons from the village munsif of the place to the effect that the party sought to be served is ordinarily a resident of the place and stating the reason for non-service. In such cases, a second service of notice to the party by means of a registered postal communication ought to be declared to be sufficient service. In every case the amount required, under the rules, for taking out notices to the defendants ought to be deposited in court by the plaintiff at the time of presenting his plaint. Where a party appears by a pleader in a case, it ought to be declared sufficient that all further notices in any proceeding in the suit prior to decree are served on such pleader. The same rule ought to apply to all further proceedings in execution where parties are represented by pleaders.

31. *Framing of Issues.*—It not frequently happens that much time is wasted by the parties being allowed to let in a lot of oral evidence on matters not directly connected with the suit and this is made possible by the very wide and sometimes vague manner in which the issues are framed. It is unfortunately the practice with some judicial officers to ask the pleaders of the parties to hand up the issues agreed to by them and adopt the same *en bloc* without bestowing a moment's thought on their scrutiny. A little care bestowed by the presiding judge in the framing of the issues that directly arise on the pleadings in a case will undoubtedly result in much time being saved at the trial of the suit. If the provisions of Orders X and XIV Civil Procedure Code, are largely resorted to much time can be saved in the trial of suits.

49. *Trial of cases.*—A more faithful adherence to the rule that a case once taken up for trial, should go on from day to day till it is finished, is bound to result

in much saving of time. If the parties know that this rule would be rigidly enforced, they will no doubt see to it that all their witnesses are ready when the case is taken up for trial. The practice of examining a few witnesses in a case and then adjourning it to a future date very often results in the parties utilising the period of adjournment to have resort to additional witnesses not thought of originally for the purpose of filling up any defect in the evidence so far recorded. If the trial of the case is conducted from day to day, as it ought to be there is no particular advantage gained by having the examination of both the plaintiff and the defendant held at the commencement of the trial. Such a procedure would ordinarily lead to the details of the defence being divulged at a stage when it may be possible for the plaintiff to shape his case accordingly and ought therefore to be discouraged.

35. *Restriction on oral evidence.*—It is by no means a safe policy to restrict the number of witnesses who ought to speak to a particular matter in issue or to impose any time-limit for their examination and cross-examination. The cases where delay is caused by the largeness of the number of witnesses cited to prove a point are very rare and may safely be ignored. A judge well grounded in the rules of procedure and evidence would always manage to see that the time of the court is not wasted by reason of prolixity in examination and cross-examination. Besides any attempted restriction on these points would be unworkable in practice.

40. *Legal representatives.*—After the curtailment to three months of the period to bringing on record the legal representatives of a deceased party, it cannot truly be said that any delay is caused in the disposal of suits by reason of dilatoriness in these proceedings. An examination of the percentage of cases in which application is made to set aside the abatement of suits on this ground would confirm this opinion. It is therefore undesirable to make it obligatory on the legal representative of a deceased party to bring himself on the record and to penalise him for default, especially as the legal grounds on which such legal representatives may be declared bound by a decree obtained with a deceased party on the record cannot stand close scrutiny.

4. *Recruitment of the Judiciary.*—The time has undoubtedly come to confine the recruitment of Judges of the High Court solely to the ranks of active legal practitioners. It is an open secret that the practitioners and litigants alike feel that such a course would greatly conduce to a more satisfactory and speedy disposal of cases in the High Court. Having regard to the undoubted reputation that the Indian Judges of the High Court have earned for efficient and quick disposal of cases, the statute must be so altered as to make the composition of the High Courts contain a major portion of the Indian element in it.

For similar reasons a portion at least of the number of district judges and subordinate judges should be recruited from the Bar direct.

Promotion to the grade of subordinate judge from that of munsif and to the grade of district judge from that of sub-judge should be made by selection and should not be confined to mere seniority. The efficiency of the judicial officer ought not to be judged merely by the statistics as to the number of cases disposed of by him during a stated period, but regard must be had mainly to the number of contested cases disposed of by him, the number of documents filed and witnesses examined therein, and the nature of the issues arising for decision. In short the quality of work turned out and not the quantity thereof should be the test.

9. *Change of jurisdiction.*—No change in the pecuniary jurisdiction of district munsifs is called for in the interests of speedy determination of original suits. As it is, the work of the district munsif with his present limited jurisdiction is heavy enough and it may not conduce to a proper administration of justice to enhance the same.

If the proposal mentioned above of appointing sub-judges from the grade of munsifs by the process of selection is adopted, it would be unnecessary to give

special enhanced jurisdiction to selected district munsifs. The idea of burdening an efficient district munsif with more onerous work without adequate compensation therefor by way of promotion to a higher grade of service will not ultimately conduce to the proper administration of justice.

12. The district judge may be relieved of some portion of his miscellaneous work by investing subordinate judges and district munsifs with jurisdiction to try probate and succession certificate proceedings and guardian petitions, and subordinate judges with jurisdiction to try land acquisition proceedings to the extent of their respective pecuniary jurisdictions. Having regard to the intricate questions of law and fact that often arise in suits to enforce simple mortgages and also suits relating to partnership, it is inadvisable to invest small cause courts with jurisdiction to try these suits.

14. The village courts presided over by the village munsifs do not yet command that confidence in the minds of the litigant population as would render it desirable to invest them with exclusive jurisdiction in any class of cases. Local prejudice and factions in villages are factors to be noted against the creation of such exclusive jurisdiction. These difficulties cannot be predicated to the same extent in the case of a multiplicity of judicial officers trying a case. The courts of village panchayats therefore may be invested, as a measure of trial, with exclusive jurisdiction up to the sum of Rs. 25 in suits on pronotes, simple bonds, and the like.

17. Sub-registrars ought not to be invested with jurisdiction to try any sort or classes of cases even though uncontested. Neither by training nor by knowledge of law or local conditions are they fitted to discharge such a duty and our experience of their work in the matter of adjudications on the fact of the execution of documents presented to them for registration does not warrant our recommending an extension of judicial powers to these officers.

18. *Appeals and revisions.*—No right of appeal or revision now conferred by statute ought to be curtailed. There may be here and there a stray case of a frivolous exercise of the right of appeal, taking undue advantage of the statutory provision in favour of it, but in the large majority of cases it is untrue to say that appeals are resorted to in a frivolous manner. Those who hold this view—unfortunately there are judges of the highest court in the land amongst the number—do so in utter ignorance of the traits and financial position of the majority of Indian litigants. With them it is not a question of prestige or even the academical interest in a question of law being duly and thoroughly investigated as is the case in the West. In a majority of these cases the sum of Rs. 1,000, Rs. 500 or even Rs. 250 would mean almost their entire fortune and it is no wonder that to them it is a vital matter worthy of being carried on appeal. This prejudiced view of the Indian litigants' character also conveniently ignores the fact that the legal advisers of the parties are also alive to their sense of responsibility and are able to persuade many a litigant to give up the idea of appealing in cases which are on the face of them frivolous. The fact that an appeal or revision lies against his decision is in many cases a salutary corrective to many a subordinate judicial officer, and human nature being what it is, the single Judge of the High Court cannot claim to be an exception to this rule. The result of the recent innovation made in the practice of the Madras High Court to have all second appeals finally disposed of by a single Judge—a practice which has met with the unanimous opposition of the entire Bar in the presidency—certainly does not conduce to our viewing with equanimity the possibility of Letters Patent Appeals being denied to the litigants in such cases.

The recent enhancement of the court fee and the increased printing charges levied in the High Court have already put a heavy handicap in the way of the litigants carrying on their appeals to the higher tribunals and any further restrictions imposed on such rights would only amount to a denial of justice to them.

23. It is equally undesirable to enact that no revision petition under Section 115 should lie to the High Court against such interlocutory orders as can be

attacked in an appeal against the decree in the suit as it is easily possible to conceive of cases in which the harm would have been done beyond remedy if the order is not forthwith taken up on revision to the High Court.

52. *Delay in the execution of decrees.*—It is true that to a certain extent the realisation of the fruits of a decree is being delayed by orders for stay of execution being obtained—in the first instance *ex parte*—from the superior courts. The practice of granting such stay of execution does not seem to be governed by any definite principle, but is on the other hand largely dependent on the temperament of individual judges. With a little bit more of caution exercised by the judge of the superior tribunal before whom such *ex parte* applications are made much of this unnecessary delay may be avoided.

56. It is undesirable to curtail the period prescribed in Section 48, Civil Procedure Code for the execution of money decrees to six years. It may be taken for granted that in the majority of cases the party who took the trouble of going to court for obtaining his decree would only be too anxious to reap the fruits of his decree in as short a time as possible. But the ingenuity of the judgment-debtor often proves more than a match to the assiduity of the decree-holder. In such circumstances it would be putting a premium on the dishonesty of the judgment-debtor to curtail the period within which the decree-holder can execute his decree. Any attempt ata modification of the existing law on the subject should show a leaning in favour of the decree-holder. For a similar reason the curtailment of the period in Article 182 of the Limitation Act to one year is also undesirable. On the other hand the law should be so amended as to make it unnecessary for a decree holder to apply for execution every three years and should be allowed to do so at any time within the period of 12 years provided in section 48, Civil Procedure Code.

If however these periodical applications, once in every 3 years, must be maintained, the starting point should be the date of the last order on the last application and not the date of the last application. The suggestions made in questionnaire Nos. 54, 55 and the first portion of 59 seem to be unobjectionable and may be adopted with advantage.

66. *Mortgages.*—There does not appear to be any justification for insisting on attestation in the case of mortgages any more than in the case of sales and leases. The judicial interpretation of the term "attested" and the provision of law that where a deed is required to be attested one of the attestors to the deed has to be called to prove the document have resulted in ingenious attempts being made to defeat the just claims of this class of secured creditors. It would therefore tend to save much time of the courts if the law were so amended as to do away with the necessity for attestation in the case of mortgages.

In the case of simple mortgage suits there is no reason why we should not go back to the old practice of embodying once for all in the original decree itself the personal decree against mortgagors, and it seems to be really a waste of time to pass one preliminary decree and a final decree later on in such class of suits.

86. *Multiplicity of law reports and speedy justice.*—It is to a certain extent true that one is bewildered by the number of law reports authorised and unauthorised that have sprung up in recent years. They show, as nothing else can, the uncertainty that prevails with regard to the laws administered in this country and the time of the court must inevitably be absorbed to a greater and greater extent by a citation before them of this bewildering mass of case law. So long as legal ingenuity and legal talent can result in making judges give these conflicting rulings on a stated question of law, nothing is gained by a mere attempt at minimising the number of these reports. If the uncertain state of the law results in more time of the courts being taken up in the disposal of cases and in encouraging the filing of a larger number of appeals the remedy for the evil must be sought elsewhere.

Mr. T. R. RAMACHANDRA AYYAR, President of the Madras Vakils Association, called and examined on Wednesday, the 6th August 1924.

Chairman.—*Q.* You are the President of the Madras High Court Vakils' Association.

A. Yes.

Q. You have been good enough to send answers to the questionnaire by your association. I think those answers have been considered by a committee of your association.

A. Yes.

Q. I see you point out that it takes a long time for the printing being done in the High Court.

A. Yes.

Q. If I follow the position, although the printing takes longer than it should, it does not really delay the hearing because the hearing is more in arrears than printing.

A. Yes.

Q. In the case of some second appeals and miscellaneous appeals don't you think that the printing of the records is unnecessary altogether ?

A. I think so.

Q. I think that the judgment of the first court is printed in the first appellate court and if some sort of typed copy of the judgment of the first appellate court is provided in a second appeal, in many cases that would be sufficient. Would it not ?

A. That has been done in many cases. There was private printing done when I think the men struck work. The result was we had to get on and the vakils themselves were asked to do private translation and printing.

Q. Was any difficulty found ?

A. Absolutely none.

Q. Is printing in Madras so cheap that you may as well get almost everything printed instead of being typed or is printing a good deal dearer than typing ?

A. I think printing is dearer.

Q. Would your association prefer to see that the rule about printing is done away with ? Would they be glad or would they be sorry ?

A. They would be glad if printing is done away with except in cases in which there may be appeals to the Privy Council.

Q. I understand that printing is done in civil revision petitions also.

A. Yes.

Q. That seems unnecessary.

A. Yes.

Q. Is it done in small cause court revisions also ?

A. Yes.

Q. I understand that you get a good many documents in the vernacular and they are required to be translated into English.

A. Yes.

Q. Where documents are translated I suppose it is unnecessary to print them. I suppose the translation could be copied in the office by a type-writer or otherwise in a decent lawyer's hand.

A. Yes.

Q. Coming to process-service, I see the complaint is the inefficiency of the process service. You think that something could be done to improve it by requiring the plaintiff to deposit money for service when he lodges his plaint.

A. Yes.

Q. Do you find that sometimes a man deposits his plaint in this province with a plainly inadequate court fee and then gets a long time to complete the court fee ?

A. I think in some cases they do.

Q. Does that amount to a nuisance or does it happen very seldom ?

A. I don't think it happens very often. It is mostly due to the poverty of the people.

Q. As regards the depositing of money for summons do you think there would be any real hardship on anybody to do it at the proper time ?

A. Yes.

Q. Then you say that where a party appears by a pleader, all further notices should be served on the pleader. I think there is already a rule to that effect: Do you think it is not always followed ?

A. Yes.

Q. And you say the same rule should apply to execution ?

A. Yes.

Q. Then you think that the presiding judge should take more care in the framing of issues himself ?

A. I think a great deal more. They are neglected in all cases so far as I know.

Q. And when he is settling the issues he may give directions about discovery and admission ? The judge should try to get a grip of the case and get it in proper order for hearing ?

A. That will simplify matters and shorten time.

Q. Is there any difficulty felt in the mofussil in trying cases from day to day, *i.e.*, continuously without granting intermediate adjournments ?

A. There is a rule of the High Court requiring them to do it and it is being done in a way.

Q. Do you have cases in which the judge takes down evidence for a couple of hours on one day, for a couple of hours on the next day and so on and then gives an adjournment for a week ?

A. That is done at present.

Q. That is to say the judge instead of taking only one case for the whole day, takes up two or three cases ?

A. The judges want to show to the High Court that they have been taking so many cases every day.

Q. Then of course the judge has a certain amount of small work which he can dispose of in an hour or two in the morning and then he takes up a regular case.

A. Yes.

Q. Would you just tell me if there is any complaint that judgments are reserved by lower courts for a very long time—one judicial officer having good many judgments at the same time ?

A. Undoubtedly long time is taken in some cases.

Q. But is that a cause of great trouble. I think it is an exceptional case only because one knows that judges in lower courts are required to write all the judgments themselves and thus a tremendous burden is put upon them in that way ?

A. Yes, but all subordinate judges have shorthand-writers and about half of munsifs have also got shorthand-writers.

Mr. Radhakrishnaiya.—But it is not every body that can dictate.

Mr. Justice Stuart.—And at the same time it is not every body that can write.

Chairman.—*Q.* You do not think that any good purpose would be served by examining both the plaintiff and the defendant at the beginning of the trial ?

A. They may be examined for the purpose of settling issues. It is very essential.

Q. But that is another matter.

A. Yes.

Q. It may of course, in some cases restrict calling in lot of irrelevant evidence, and where the plaintiff has the burden of proof it may assist him in some cases, but you say that that can be done under the present Code by proper interrogatories and discovery and you prefer to see the present arrangement stand ?

A. Yes.

Q. Do your courts in this presidency get the same sort of thing that courts in other provinces sometimes get when a question of custom is in dispute ? After calling a good many witnesses who are of some use on the question of custom, the parties proceed to call dozens more who are worse and worse and are going down and down and who simply waste the time of the court in that way ?

A. I have not known many instances of that kind.

Q. Do you think that in this presidency no provision by which the court can restrict the number of witnesses is called for ?

A. Yes.

Q. Is there any thing you would suggest to keep down the unnecessary calling in of evidence ?

A. If the presiding judge exercises his discretion, there will be absolutely no difficulty.

Q. Do you know what the attitude of people is towards the presiding judge ? There will be no difficulty at the beginning of the suit, but afterwards the parties keep their eyes on the court of trial. Do you think that, if the judge says to a vakil, the evidence of a particular witness will not be of any use and that he will not take it, the vakil accepts the advice and says very well ' you may not take his evidence and I will not call him ' or he goes to the ultimate court ?

A. I think it all depends upon the attitude of the judge. If he is tactful he can cope with this work.

Q. You do not think it is practicable to compel the legal representative to come forward and join in the suit ?

A. I think the question as it is framed seems to be very reasonable, that is if he really knows that the person is dead and he is his legal representative and if he does not come forward, it may be treated that he does not want to come forward, and he may be penalised. If a rule is made that it is his duty to come forward, then he may do it.

Q. Do you think that if there is a rule it will be of some use ?

A. These petitions take enormously long time.

Q. Great difficulty is felt when there are many defendants. If the legal representative does not know of the death, the legal representatives of the other party do not tell him and then waste the time of the court when the case comes up for hearing. Do you not think some thing ought to be done to stop that ?

A. Some thing must be done. A rule should be made making it a duty of the plaintiff or the appellant to bring in legal representatives.

Mr. Radhakrishnaiya.—*Q.* There may be cases where, while the suit is going on, the legal representative is too far away—he may be in a distant part of the country ?

A. He can inform the court and that can be treated as an exceptional case.

Chairman.—I see you want to restrict the recruitment of district judges to the ranks of legal practitioners ?

A. Yes. The work will be done more speedily and more efficiently.

Mr. Justice Stuart.—*Q.* Is it your experience that members of the legal profession decide the cases more speedily ?

A. If proper men are appointed.

Q. I don't want to ask you about their ability. What I am asking you is that from your experience in this Presidency can you say that men appointed from the legal profession decide these cases more speedily ?

A. Yes.

Q. This is not the case in the other provinces.

A. If you like I can give instances.

Chairman.—I am sorry it is hardly within the scope of this Committee to deal with the prospects of the Civil Service.

You say that you would like to have a proportion of district judges and subordinate judges from the Bar but the question is how to appoint to subordinate judgeship and district judgeship from the Bar without restricting too much the prospects and promotion of the district munsifs. I hope you will agree with me that if you want to get a good type of men as district munsifs the thing which brings them here is more or less the idea that at the end of his career one gets a fairly high position. The question in each province is how to adjust the claims of the two parties, *i.e.*, service claims and the desire of the Bar. I understand some sort of system has been adopted in this Presidency, *i.e.*, additional appointments now generally go to the members of the Bar.

A. Yes, but I think more appointments should be reserved for the members of the Bar. Very few appointments are now reserved for the Bar.

Mr. Sastri.—*Q.* That would shut the way of Civilian judges to district judgeship ?

A. Yes.

Q. The Civilian judges come with some expectations and their expectations will then be lost ?

A. It is better for them not to come.

Mr. Justice Stuart.—*Q.* You want to reduce the number of appointments which are given to the Provincial Service ?

A. I have no objection to giving them sufficient number of appointments.

Q. You are satisfied if four appointments are given to them and 24 to the members of the Bar. Would that be a sufficient division ? How many appointments are there of district judges ?

A. Thirty-two.

Q. Then you are satisfied if 4 are given to them and 28 to the Bar.

A. I never said anything like that.

Mr. Rao.—*Q.* Would you ensure proper selection from the Bar ?

A. Yes. The Bar Associations should be consulted as to the appointment of a barrister or a vakil. These appointments are not properly made in these days because we are not consulted.

Mr. Sastri.—*Q.* Is there any harmony ?

A. Plenty.

Chairman.—*Q.* As regards the question of pecuniary jurisdiction you are not in favour of making any change with regard to the district munsifs. You think that if we enhance their jurisdiction it would throw more work on the district munsifs ?

A. Yes.

Q. Then you think that if a district munsif is given more onerous work he ought to be given an advanced status in pay by making him a subordinate judge. Is there any such arrangement here in Madras as we have one in the United Provinces, namely, that the man's pay should increase according to time-scale ?

A. No.

Dr. DeSouza.—*Q.* I think there is a maximum pay for a munsif, *i.e.*, Rs. 600 and no munsif can rise beyond Rs. 600.

Mr. Justice Stuart.—*Q.* He cannot rise because there are no vacancies. In my province if a man passes the efficiency bar his pay will increase automatically whether there are vacancies or not.

A. That is not the case here.

Q. That is our practice and we have found it very satisfactory.

A. We would like to have that here also.

Dr. DeSouza.—*Q.* Can they rise to Rs. 1,000. ?

Mr. Justice Stuart.—No Rs. 850.

Chairman.—*Q.* As regards the increasing of jurisdiction of small cause courts you don't think that suits on simple mortgages or suits for partrnership accounts ought to be put into the small cause courts ?

A. Yes.

Q. Now as regards the village courts which are presided over by village munsifs you say faction is against them. How long is it since these courts were established in this presidency ?

A. 4 or 5 years.

Q. I am talking of village munsifs and not of panchayat courts. I believe the village courts have been going on since a very long time ?

A. Yes.

Q. As regards them, what do you think ? How are they getting along ?

A. They are very unpopular.

Q. Because there is faction in those villages ?

A. Yes.

Dr. DeSouza.—*Q.* The local munsif is the village headman.

A. Yes.

Chairman.—*Q.* Who constitute the court, apart from this village munsif himself ?

A. He is the only person.

Q. But under the new Act he is given the position of head panchayat man ?

A. Yes.

Q. You think that these new panchayats may be vested with exclusive jurisdiction up to Rs. 25 in suits on simple pro-notes in this Presidency ?

A. There is no harm.

Q. Would you give the district munsif a sort of right of revision or a right of transferring cases for special reasons ?

A. That can be done.

Q. I think you, like other members of the profession, will be against the curtailing of the right of appeal ?

A. Yes.

Q. That is my hobby and I wish you to consider the point just for a moment with me. Don't you think that three hearings in cases of small value—not being of small cause court type—are very often a too liberal process ?

A. Yes, that is so.

Q. I am not suggesting that in such cases you should shut up the right of second appeal. I do not suggest that at all. But when a man asks for a second appeal, *i.e.*, for a third hearing, don't you think that his application might be scrutinized by a High Court Judge either from the point of view whether there is a point of law or from the point of view whether justice really requires that the respondent should be put to further trouble and expense ?

A. As a matter of fact it is being done here. If one judge likes he can put the matter before two judges more for dismissal than for admission, and that process, I think, gets rid of very many appeals.

Q. Well I know it gets rid of a good many, but, on the other hand, if you look at the ultimate fate of appeals that are admitted under rule 11, it seems as if a very large number of them ultimately come to nothing ; that is to say, in order to put right 20 cases or 25 cases, the High Court has to go through something like 80 cases, with the result that a great deal of expenditure is incurred by the respondent without in the end making any amends. Do you think that it will be very objectionable, if instead of Order XLI, rule 11, in all cases—let us say—under five hundred rupees in value the appellant had to get special leave to appeal, that is, to show whether the case is of special difficulty or of special importance, or the judgment below is in some way apparently wrong, or for some special reasons so that rather a fewer cases would ultimately be dismissed than at present ?

A. As a matter of fact, in practice now, there is an enormous difficulty in getting a second appeal admitted. It is sifted very carefully by the judges.

Q. Do you not get some judges who take the view that the question is really whether the appellant is abusing his right ? Section 100 gives him a right of appeal and unless you can see that he is abusing the right, it should be admitted.

A. That is what they are doing in practice.

Q. Instead of giving the right and throwing it out summarily, would it not be better to put the burden the other way. You can say " You have had two trials and now you have got to give me reasons why you should have a third hearing." If the case has a special reason, the third hearing may be given. It would not make very much difference in the present practice but it would save a certain number of respondents from being troubled, as ultimately turns out.

A. But that is the rule applied now even in important cases.

Q. The practice, I take it, is that if there is any point of law it is generally admitted ?

A. They say " It is against you." If there is nothing, they dismiss it.

Q. Then such a change in the law would not make much difference in Madras. Of course, in other provinces it will make a good deal of difference ?

A. Yes.

Q. You have recently started trying all second appeals by a single Judge, unless for special reasons the single Judge refers a suit to the Bench ?

A. In the beginning they did refer to the Bench, but when an appeal goes to the Bench the Chief Justice says " They could have disposed it themselves."

Q. Do you find any difficulty in getting it referred to the Bench. If a vakil asks for a second appeal to be referred to the Bench on the plea that there is a point of Muhammadan law, do you find any difficulty ?

A. When it goes to the Bench the Chief Justice says " Why is it referred to us" and that discourages them, and the result is the single Judge says " I will hear it." In the beginning there was an inclination, but latterly they are against it.

Dr. DeSouza.—Q. Have you found in your practice that the number of Letters Patent Appeals against the decision of the single Judge has increased ?

A. I find that a lot of appeals are filed.

Q. The period of limitation is only thirty days, so that the appeals against the decisions made before the vacations should have been filed by now ?

A. Yes.

Chairman.—Q. Do you agree with me that when a second appeal comes up to the High Court, if the High Court is going to hear it, it should be heard, if possible, once and for all. Taking a second appeal of Rs. 250, through three or four hearings, and then possibly resulting in a remand, is far too elaborate. Do you agree that if a case is going to be heard by a Bench it is much better to give it to the Bench ?

A. Yes, it would be very good.

Q. Do you not think that the right time to decide whether a case requires a Bench, is before the case is heard ?

A. Yes.

Q. And so far from discouraging the practice of referring cases to the Bench that will save the double hearing and also save time ?

A. Yes. It will also result in an enormous saving of money of the party.

Q. Do you not think that, from the point of view of the respondent, each High Court should be told that it has to make up its mind as to how the case is going to be tried ? If it is a case to be tried by the single Judge let it be tried by the single Judge, but if it is a case of Letters Patent Appeal, let it be tried by a Bench to begin with.

A. That will be a very salutary rule.

Q. Considering that a single High Court Judge, in this province, has to do much greater work than in any other province, will it be better, just for safety, to lay it down that even if, in the end, a single Judge gave a certificate, there may be a Letters Patent Appeal ?

A. That is a very good suggestion.

Q. Now, you are against enhancing the court fee for the purpose of keeping down litigation ?

A. Yes.

Q. There is just one case, about which I would like to have your opinion. If a man has a claim case decided against him, he can bring a suit to establish his title upon a ten rupees court fee, with the result that, in some cases, suits are filed merely to hang up execution. Do you think that there will be no great objection to abolishing that exemption from *ad valorem* fee in case of suits brought under Order 21, rule 63 ?

A. It may work hardship in *bonâ fide* cases. There are many of them.

Q. On the other hand the claimant has a finding against him that he has no possession ?

A. These findings are arrived at in a very summary fashion. We cannot attach very great importance to them.

Q. But still the chances are that if there had been no execution that man would have had to bring a suit to get into possession. One has got to take the advantages and the disadvantages. Apparently, the cheapness of bringing this suit leads to a great deal of hardship to the decree-holder. It is a case, where it seems to me, that the court-fee for the purpose of keeping down frivolous applications might be enhanced, and of course that is an exception, but the real question is whether an exception should be made ?

A. As it is, the court-fee has been unduly increased here now.

Q. And, of course, having increased it they do not give to the litigants diligent proceedings and then they make a profit out of it ?

A. Yes.

Q. I see that ten rupees court-fee has, in some cases, become fifteen rupees ?

A. Yes.

Q. You think that stays of execution and *ex parte* injunctions are too freely granted interfering with execution and progress of the suit ?

A. That depends upon the judge. Some do, others not.

Q. Do you think a good many do ?

A. Yes.

Q. You think a little bit more of caution might be applied ?

A. Yes.

Q. I take it that in the case of money decrees people do not get stay of execution without furnishing security.

A. I think as a rule, in Madras, money decrees are seldom stayed.

Q. In the subordinate judge's court or in the district court, do you think they grant stay without requiring security ?

A. Yes.

Mr. Radhakrishnaiya.—When an interim stay is granted there is no order for security.

A. No.

Q. Sometimes a party who gets interim stay can keep it for 4 or 5 months.

A. Yes.

Chairman.—*Q.* Then, you are not in favour of curtailing the period within which a decree-holder can execute his decree ?

A. Yes.

Q. Would you be in favour of abolishing steps-in-aid under Article 182 ? Do you think they do any useful purpose ?

A. I think the 3 years period within which they should put in an application may be abolished. There is no good at all done. It increases the work of the court without any adequate advantage to the party.

Q. Supposing for the sake of argument you had an arrangement by which all steps-in-aid were abolished, would you not get into trouble in the case of *ex parte* decrees if they were sought to be executed in the eleventh year for the first time ?

A. It is too exceptional to be cared for.

Q. Would you be content with a rule that no execution order should be made except upon notice to the judgment-debtor if 6 years had elapsed since the date of the decree ? I mean, to prevent an *ex parte* arrest.

A. That may be done. It may be that in some cases there is a discharge and the other man might have failed to get it certified in time.

Q. If it is a question of discharge unless it was within 3 months it would not be recognized ?

A. Yes.

Q. At any rate, if the steps-in-aid are to be kept, you think it should be from the date of the last order and not from the date of the last application.

A. Yes.

Q. Then you are in favour of abolishing the necessity of attestation in the case of mortgage deeds ?

A. Yes.

Q. The difficulty is that there is no necessary change of possession after mortgage. A sale if it is unaccompanied by change of possession would be a suspicious thing. But a mortgage is quite a different thing. I understand that there are some usufructuary mortgages where the tenant keeps in possession as a tenant of the mortgagee under an arrangement.

A. Yes.

Q. Do you think it would perhaps be enough if the old law before the Privy Council decision about attestation is restored ? Would that put the mortgagee less in the hands of the attesting witnesses ?

A. Yes.

Q. Then you think there is a good deal of time wasted owing to the multiplicity of Law Reports. It is no good blaming the reporter ; but the real difficulty is the conflicting decisions.

A. Yes.

Q. I do not know how you are in Madras. In Calcutta it would not be practicable to confine the profession to the Indian Law Reports. The Calcutta Weekly

Notes in particular has more of the decisions on the Bengal Tenancy Act and many other cases, and what is more, it brings the decisions out much earlier than the Indian Law Reports.

A. The same is the case here. It is not practicable to lay down a rule that the courts will only look at the Indian Law Reports. If they do not look into the unreported cases that will be a great thing.

Q. It might be quite a good rule—in fact it seems to be intended by the present law that judgments coming from other provinces, unless they are reported in the Indian Law Reports should not be cited. In fact the Calcutta Weekly Notes and the Law Journal serve a very good purpose.

A. We find so even here.

Q. Do you find that those publications that try to report every case in every High Court—you have got one going on in Madras and one in Punjab—are driving the courts rather to self-defence ?

A. Yes.

Q. I mean there are many cases handled by junior vakils with very little discretion and they are a perfect mine of irrelevant and defective matter.

A. Yes. They may be excluded.

Q. Would you let each High Court make a rule as to what reports should be cited and what not ?

A. Yes, in consultation with the Bar.

Q. But there is a law on the subject now.

A. It is not acted upon.

Q. Do you not think that the law, if it is acted upon, might be quite sufficient, that is to say, not to pay any regard to the cases in other provinces except those in the Indian Law Reports. In your own province you can take account of any report with which the court is satisfied.

A. Yes. There is no harm in that.

Q. Is there any other matter which is not dealt with in the questionnaire or any other suggestion apart from the questionnaire that you yourself or your association would like to make to the Committee ?

A. One suggestion I would like to make is as regards the matter of appointment of officers—munsifs and district judges and the postings of these gentlemen. If greater care is exercised, I think it will conduce to a more speedy disposal of cases. For instance in the posting of officers, all these munsifs and subordinate judges are expected to pass an examination in a second language. This is just like an European gentleman passing in a vernacular. It means that they did not know the language. As a matter of fact the result is if a Tamil man is put into a Telugu district, not being well acquainted with the language, enormous time is wasted because most of the records are in the vernacular. So, in the posting of these officers greater care should be exercised. In the appointment of munsifs I think it used to be done in the former days, in the eighties, in this way. The Judges used to watch and see who were the best among the Bar and who would be willing to go and then such men were chosen by them. If this is done I think there will be greater efficiency and work will be done more speedily. As it is, I do not think it is done so well.

Mr. Justice Stuart.—*Q.* Would it be possible to appoint just a sufficient number of Tamil speaking judges and a sufficient number of Telugu speaking judges and keep them in those districts ?

A. Yes. I think in many cases it is done. I only say it may be more largely done.

Q. You would like to see a rule laid down that a man should not be sent to a district in which he could not speak the language ?

A. Yes.

Dr. DeSouza.—*Q.* I think you spoke about it being very hard to get second appeals admitted. Did you have the difficulty more recently or has it always been the same ?

A. Only more recently.

Q. To what do you attribute this acuteness of the difficulty ? Do you attribute it to the change of the system ?

A. No. There are so many appeals to be disposed of. There is accumulation of arrears and they have to tackle with that question.

Q. I understand that there has been a change in the system of admitting second appeals ; what exactly is it ?

A. Appeals are first of all examined by a single judge and if he does not want them to be admitted then they go before two judges and they dismiss them.

Q. What was the practice before ?

A. The former practice was this. The registrar used to admit these appeals but his admission was done in a haphazard way. Good cases were posted for hearing under Order 41, rule 11, and bad cases were admitted. That was the result.

Q. When was the new system introduced ?

A. Since January last.

Q. So that we are not yet in a position to know how many appeals admitted under the present system are likely to end in reversal or confirmation because none of the appeals admitted under the present system have come up for final hearing.

A. The system of single Judge came into force in January last, but the system of admission has been here for one or two years. I do not complain of the new system.

Chairman.—The old system will apply to revision petitions. They are admitted by the registrar and a notice goes to the respondent upon his orders.

A. Yes.

Dr. DeSouza.—*Q.* I believe you said that your subordinate judges are men of character and ability ?

A. Yes.

Q. And generally their knowledge of law is very good ; their power of appreciating evidence is also good ; that has been your experience, wide experience, over the whole of the presidency ; you have also found that their findings on fact are generally very very good and you have no reason to complain about it ?

A. Yes.

Q. That being so what would be your attitude towards a suggestion that in cases of limited value, say up to Rs. 1,000, decided by munsifs appeals should be heard by a bench of two selected senior subordinate judges ? Their decisions should be final and there should be no appeal unless they differ in which case there would be a right of appeal or they would have the right to state the case to the High Court if the point of law involved is so difficult that a reference to the High Court is necessary. The idea is that the Bench should be constituted of two selected senior subordinate judges who would be on the top of their grade, men of proved character and ability who after serving on the Bench would aspire to the post of district judge. What do you think of such a Bench ?

A. So as to prevent second appeals ?

Mr. Justice Stuart.—*Q.* Not exactly to prevent second appeals. The point is with regard to delay. We find here that cases do not get a final decision for seven years under the present system. This remedy is put forward for your consideration and we would be glad to have the opinion of an experienced lawyer.

A. A bench for each district.

Dr. DeSouza.—*Q.* That is a question of detail ?

A. Appeals of Rs. 1,000 and below.

Mr. Justice Stuart.—*Q.* All other appeals would be heard as at present ?

A. If second appeals are not also prohibited, I see no objection to it.

Q. These Benches will be final on points of law ; so to a certain extent the right of second appeal would cease. Do you think that important points of law arise in cases of Rs. 1,000 or below ?

A. My experience is that important questions of law arise in very small cases.

Q. We are assuming that these judges who will sit on them will be honest and competent ?

A. I have no doubt about it, but honesty does not give them knowledge of law.

Q. But they are competent also ?

A. I cannot say that subordinate judges have the advantage which the High Court Judges have of knowing and laying down law. In land cases the value may be considerably large and I think it is a very serious matter. I do not think that people should be deprived of the right of appeal.

Q. Are they not already deprived of a right of appeal on facts ?

A. Under the law as it is laid down he has no right of appeal on facts. One judge is not enough to deal with such cases.

Q. Therefore we want a Bench of two judges ?

A. But I think the right of laying down the law is reserved to the High Court only.

Q. But that will be reserved under the present system also ?

A. But many intricate questions of law will arise.

Q. Is it your experience that intricate points of law arise in many second appeals valued under Rs. 1,000 ? Madras may be very different from other places ? Do you consider that intricate questions of law arise frequently in appeals of small value ?

A. Yes, they do arise.

Q. I know they do sometimes.

A. Legal practitioners do not take all the second appeals that come to them. As a matter of practice I may say that if 20 second appeals come to me I take only one.

Q. And what about the other 19 ? Do they go to some body else ?

A. They do in some cases.

Q. In 19 cases out of 20 they do ?

A. I am of opinion that the present safeguard is sufficient. First of all an appeal goes to a single Judge, then before two judges and then before a Bench.

Dr. DeSouza.—So you are not in favour of the suggestion ?

A. No.

Q. Apart from the Bar, what will be the attitude of the public ?

A. The Bar simply reflects the opinion of the public.

Mr. P. RAMANATHAN, Representative, Attorneys' Association, Madras.

Written Statement.

A. (1) High Courts.

(*a*) Six months.

(*b*) One year.

C. Execution should compulsorily, by rules, be issued within seven days of the date of filing.

4 & 5. The association would recommend graduates in Law being employed in the courtof small causes, Madras, instead of as Bench clerks in the High Courts prior to their being recruited to the cadre of district munsiffs. They will gain much more experience of the work they have to discharge as district munsifs instead of the routine work of the High Court. As regards the High Court Judges the association feels that, at least one judge may be selected from the rank of the attorneys. As the rules now stand although there are no legal barriers, none having been selected so far in recent years, all B. Ls. are flocking to the vakils' branch and the alteration of the rules of the High Court giving the vakils choice to become attorneys has no effect, for it is felt that joining the attorneys' section is to give up all hopes of being raised to the High Court or other Bench, not even to the Bench of the court of small causes. Provision should be made in the rules of the Provincial Government and the High Court for certain appointments being reserved to the attorneys as heretofore, as they are better acquainted with the procedure owing to a very special training of five years which the vakil bar can never claim to unless it be after many years of successful practice.

8. It is so in Chingleput. The location of some courts in Saidapet or Tiruvuttiyur will greatly avoid delay in the civil courts.

14. No, concurrent jurisdiction with the civil courts for some time longer is necessary. The local panchayat courts are no doubt better able to appreciate facts and arrive at truth, but justice will often fail owing to the panchayatdars being swayed by local influences and prejudices. If no exclusive jurisdiction is conferred, they may be granted power to try cases upto Rs. 100.

15. There can be no objection to suits relating to partnership with a small capital of Rs. 500 being dealt with by the court of small causes as a first instalment, provided a right of appeal is allowed.

23. The association does not view with favour the suggestion that the decretal amount should be deposited in court before a revision petition is presented. Revisional powers against interlocutory orders should be maintained, for otherwise hardship will result in a variety of cases.

24. In the case of trial of orginal suits, justice will be more speedy if certain summary powers are conferred on courts so as to expedite the final hearing in special suits, as in the case of damage suits, where the general procedure is not followed which only tends to unnecessarily prolong and delay the hearing, the delay often resulting in the failure of justice to litigants.

25. In such cases the summons may be served at the last known residence of the defendant by affixing it at the outer door of the last known residence and by post.

28. After the first service on the defendant, further service of the notices may be effected by post. The village officer may be used for the purpose of serving, where the officer is also a magistrate.

29. Yes, in so far as notices of execution are concerned.

30. Yes.

31. In the addition to the pleadings the court should also examine the documents relied upon by the parties if already filed before framing the issues, and in their absence the parties must be directed to file further statements.

33. It will be conducive to the better hearing of cases if after the examination of the parties for the purpose of ascertaining the points in controversy steps should be taken for the summoning of the witnesses.

58. Yes. The four exceptions may be adopted as that will avoid vexatious applications and sometimes even subsequent suits arising out of them.

64. Yes. Sale-proclamations should be served on the judgment-debtor in all cases.

Sale-proclamations cannot be served with the writs of attachment. It is impossible under the present procedure.

The rules relating to the engagement of pleaders require alteration before introducing any rule as to service of notices on the pleaders on record. At present the parties can engage different pleaders at different stages and there is no certainty that the pleader who appeared at an earlier stage will be on record at later stages or to the end. On the Original Side of the High Court the rule is that no vakil or attorney is allowed to act or plead except where the consent of the vakil or attorney on record has been obtained. If such rules are introduced in other courts also then the suggested rule as to serving notices may be employed.

73. Secondary evidence may be let- in provided the practitioners concerned certify as to the correctness of the same.

76. Yes, as it will effectively check speculative litigation.

85. Yes : we are in favour of courts referring to referees suits relating to partition, partnership, accounts and even assessment of damages.

87. Codification clarifies the law and helps laymen to ascertain their rights and helps the courts in speedy disposal of cases. Hindu Law and Muhammadan Law may be codified, especially the Law relating to inheritance and coparcenary rights and debts. Also the law of torts.

Mr. P. RAMANATHAN, Representative of the Madras Attorneys' Association, called and examined on Thursday, the 7th August 1924.

Chairman.—*Q.* I see you suggest in your written statement, in answer to the first question, that execution should compulsorily be issued within seven days from the date of filing. Would you just explain this ? I do not quite follow.

A. At present when an execution application is filed in the small cause court at Madras, it often takes much longer time, which not only inconveniences the parties but is a very objectionable state of things because people are not sure of the fruits of their decrees. So if there is a definite rule that the office should not take more than seven days that will greatly expedite the business and will be just to the litigants.

Q. But what exactly do you mean by saying that it should be done within seven days. First of all an execution application is filed in the office of the registrar. In what way do you want him to do it within seven days ?

A. What I mean is this. It must be in the hands of the bailiff within seven days from the date of filing.

Q. How long does it take in these days ?

A. Two or three weeks.

Q. What is done with the application in these two or three weeks ?

A. It is supposed to be passing from hand to hand.

Q. What hands are they ?

A. Clerical staff, *i.e.*, execution clerk, etc.

Q. What has he to do with it ?

A. He is supposed to check it, *i.e.*, to see whether the name of the plaintiff is correct or that the stamp is all right and such like things. When he is satisfied it then goes to the registrar for final orders. Now there are some registrars who pass orders in court and some in chambers as they wish, with the result that the practitioners and litigants are greatly inconvenienced.

Mr. Sastri.—*Q.* I think this delay is recent ?

A. It is increasing day by day.

Q. I know that in the time of Hon'ble Mr. Justice Kumarasami Sastri it used to take two days.

A. They were old times.

Q. From how many years is this going on ?

A. During the last two or three years.

Q. Is it going from bad to worse ?

A. Yes.

Chairman.—Q. I see you say that you would recommend that tuhe men who are made district munsifs should be employed in the small cause co rts instead of being bench clerks in the High Courts before they are made district munsifs. At present are they employed as bench clerks in the High Court ?

A. Yes. At present they are taken as bench clerks on a salary between Rs. 90 and 120. They are there only sitting before the Hon'ble Judges and observe what is going on in the cases. That work is all appellate work and they never see any original work. They only read the records and hear arguments.

Sir T. Desikachari.—Q. Are appointments not made direct from the Bar ?

A. Yes, appointments are made from the members of the Bar but I have only referred to them who are first made bench clerks.

Chairman.—Q. I understand that these people are taken as bench clerks because they want bench clerks and afterwards they are promoted as district munsifs as a matter of promotion. Now, if they send these bench clerks to the small cause court from where should they get bench clerks ?

A. They should do just as is being done in the Revenue Department. There is a cadre of probationary men. For certain terms they are put on certain duties and in this way they acquire complete and necessary knowledge.

Mr. Sastri.—Q. You see that the tendency is against the appointment of district munsifs from the ministerial staff ?

A. That is a general prejudice and a policy of not promoting those who have once been petty clerks.

Mr. Radhakrishnaiya.—Q. What work do these bench clerks do ?

A. They prepare decrees, etc.

Q. You mean that they should be sent to the small cause court and there they will learn office routine ?

A. Yes, they will learn there what a munsif has to do.

Dr. DeSouza.—Q. What exactly is the practice ? Are these men selected to serve as bench clerks on the Appellate Side of the High Court and are nominations made for the district munsifships from these bench clerks ?

A. They are bench clerks who are often promoted to district munsifs.

Q. Are these bench clerks guaduates in law?

A. Yes.

Q. What is your objection then ?

A. I have no objection except that if they are sent out it would be better.

Chairman.—Q. I see you say that the attorneys should be sometimes made Judges of the High Court. Under the new rules attorneys can become advocates ?

A. There are no legal barriers but nobody has ever been appointed as such.

Q. But since the change made by the Bar committee an attorney may become an advocate ?

A. He can.

Q. Do you think that if he becomes a Judge it would be better ?

A. There is a provision that if the Judges are inclined to make an attorney a Judge they can do so.

Q. Do you think that practice as an attorney is as good an approach to the Bench as practice as a vakil or barrister ?

A. Yes. In some cases they are B.A., B.Ls.

Q. B.A., B.L. is no qualification in itself and the work of preparing cases, etc., is no doubt extremely important but it is different from the actual conduct of cases in court. Do you think that if a provision be made to enable them to get a seat on the Bench, it would be an easy thing for them ?

A. If not in the beginning, a few months experience will make it so.

Q. Then you think, as regards panchayat courts, that it would be better for some time yet to leave them with concurrent and not give exclusive jurisdiction, and that if that is done they may be granted power up to hundred rupees ?

A. Yes.

Q. You think that suits relating to partnerships, with small capital might be dealt with by the court of small causes, but do you not think that, although the judge might be competent enough in many cases, the taking of partnership accounts and dealing with partnership questions are rather an involved matter and that you might run the risk of congesting your court of small causes ?

A. But there are three courts and one registrar.

Q. Are you speaking of Madras ?

A. Yes.

Q. You think it is good for the whole of India. It is not particularly difficult but it particularly takes a very long time. Another thing is, you know, partnership may have a small capital, but it may have a very large turn-over. Twenty people may be doing a tremendous business on a very small capital. Then you are against making a provision that the decretal amount should be deposited in the court before revision. I understand that some years ago there was such a provision. Was that in regard to ..... ?

A. That was in regard to new trial applications.

Q. Then you suggest that summary powers be conferred on courts to expedite the final hearing in special suits, such as damages. What do you mean by damages, damages for personal injury or....

A. Damages for personal injury or for defamation.

Q. What powers do you want to confer so that courts may deal with such cases expeditiously ?

A. They can do it, but they seldom do. They say that there is nothing particular in these cases.

Q. It is only when there is anything particular in it that it should get precedence over others, but there is no difficulty in regard to the power of the court, is there ?

A. No.

Q. Then you are in favour of preventing a person from urging that he has paid up the decree within the last three months unless it is done by a cheque or money order, or by one of the ways mentioned. Do you think that outside Madras, in country places, the uneducated villagers would be able to make payment in one of these ways ?

A. Yes. In case of revenue money order, for the money due to Government, the postal channel is quite good.

Q. The law is pretty hard and unless the man gets the thing recorded within three months, the law makes him pay over again. You do not want to make a very strict rule, still more strict than you can help it. What do you think of this that as a preliminary step forms of money order specially adapted for making payment in courts should be provided by the post offices, simply to give the debtor facility in the matter of paying the decree in the court, without having to come to that court and hanging about, and tipping the clerk to attend to him.

A. That will be an excellent method.

Sir T. Desikachari.—It is being allowed in Madras.

A. The High Court rules permit payment by money order even now, but some particulars are required before the money is received.

Chairman.—*Q.* But so long as the number and the year of the suit were given and also certain particulars which might be contained on the money order, there might be no need of formal applications ?

A. No leave is wanted, only the money order is of a coloured paper.

Mr. Radhakrishnaiya.—*Q.* In places like Madras 'shahukars' receive small payments from the judgment-debtor, and in some cases they refuse to give a receipt. The law, as you know and as the chairman put it, is already strict. Do you not think that, in such cases, to have a strict rule would work hardship upon the poor judgment-debtors ?

A. If the judgment debtor sends the money by money order he will be quite safe.

Q. The 'shahukar' will come in the evening and will take two rupees and five rupees, without giving any receipt to the judgment-debtor ?

A. We cannot help it.

Chairman.—*Q.* Now just tell me as regards the office of the Original Side of the High Court, whether you find the office fairly satisfactory ; if you want a copy of the document, or the document translated in the translation department, or if it is a question of drawing up a decree, do you find it much under-staffed ?

A. The work in recent years has certainly increased, but I cannot say that it is unsatisfactory. A few more clerks will, however, certainly increase the efficiency and facilitate matters.

Sir T. Desikachari.—*Q.* Is it a fact that there is a lot of delay in securing copies ?

A. Yes.

Q. Is it that there is a lot of delay in getting certified copies ?

A. Yes.

Chairman.—*Q.* Which department do you think is most over-worked at present ; the copying department or the translators department ?

A. There has been an increase of work throughout from what it was 7 or 10 years ago. There has not been any increase in the number of clerks excepting the assistant registrar.

Q. Do you find any particular office so overloaded that you cannot get your copies in a reasonable time ? I mean, do you think whether one can put his finger in any particular branch of the office and say it wants strength here ?

No answer.

Sir T. Desikachari.—*Q.* Shall I say the office requires greater supervision ? There are enough clerks to do any amount of work and they are not properly supervised ?

A. The hands are so frequently changed that we cannot say what it is. There are slow clerks of course.

Chairman.—*Q.* I think your association has not put forth any complaint against the High Court office in any way ?

A. No.

Sir T. Desikachari.—*Q.* You have considerable experience of the conditions of the city of Madras ?

A. Yes.

Q. You have a city civil court ?

A. Yes.

Q. I take it that it has been working for more than 30 years ?

A. Yes.

Q. Has it been working satisfactorily ?

A. Yes.

Q. The number of suits disposed of by the city civil court every year is very much the same as the number of suits disposed of by the High Court ?

A. Yes, nearly the same number.

Q. What do you think of suits between Rs. 2,500 and 5,000 also being disposed of by a judge like the city civil judge ?

A. It is the very best thing and ought to have been done long ago. It is long over due.

Mr. Radhakrishnaiya.—Q. Then that would require another judge ?

A. That goes without saying.

Sir T. Desikachari.—Q. Is it a fact that there are many suits between Rs. 2,500 and 5,000 which are now being disposed of on the Original Side ?

A. There is quite a large number.

Q. Do you think there is any serious objection to these suits also being disposed of by an additional judge of the city civil court ?

A. There is absolutely no objection. It is only difficult to get the bodies responsible for this to do it quickly.

Q. Do you remember the time when the city civil court was established in Madras?

A. Yes.

Q. Was there not a lot of opposition then ?

A. Yes.

Q. Do you not think a similar opposition will be presented by vested interests like the Chamber of Commerce, the Attorneys Association and the members of the Bar ?

A. Some opposition may be made by the Attorneys Association. But it is only Rs. 5,000 after all. Looking at it from the standpoint of the litigant, a second city civil court would be a very good solution—rather a city civil court with an additional city civil judge.

Mr. Sastri.—Q. You are acquainted with the present system of commercial suits under rule 15, clause (*a*) ?

A. Yes.

Q. Can you tell us how many suits within Rs. 1,000 were filed under clause (*a*) ?

A. It may be a fourth.

Q. What is the effect of classification on a commercial suit ? What does the party gain ?

A. That is all being done only recently.

Sir T. Desikachari.—Q. Does it not give a certain amount of precedence ?

A. Yes.

Mr. Sastri.—Q. If a suit is classed as a commercial suit does it follow that it must be heard earlier ? Is it not that it is taken earlier only when you put in a petition that it must be treated as a commercial suit and must be taken earlier ?

A. Yes. The party must put in an application to that effect.

Q. Now I find that in 1920 only one such application was made ; in 1921, seven; in 1922, four ; in 1923, seven ; and in 1924, one. Does it not show that there is no tendency on the part of the litigant public to have commercial suits tried under the special procedure, and that there is an inclination to have even a commercial suit tried in the ordinary way ?

No answer.

Chairman.—Q. What is being pointed out to you is that there are in the list a great many suits in fact of a commercial character and that only in very few cases do the parties ask that the expeditious commercial procedure should be applied to them. Why is that ? Don't they want expedition in Madras ?

A. Many of the people are only Indian commercial men.

Sir T. Desikachari.—Q. What is the nature of the commercial suits in Madras ?

A. Occasionally they are on promissory notes.

Chairman.—Q. He is talking of the other suits, in fact, roughly speaking, of the commercial matters which are brought on list 'A.' What I want to know is, when these are listed on the commercial list what is their nature ? Are they suits relating to foreign trade, *i.e.*, goods imported from Manchester or anything of that sort ?

A. I cannot give any answer.

Sir T. Desikachari.—Q. I think we should go back to the proper question. I was putting you a question with reference to the city civil court. I want to know whether there is anything special about the city civil court in Madras which should prevent the jurisdiction of the city civil court being enhanced to Rs. 5,000 ?

A. There is nothing.

Q. And the result is that there will be an additional city civil court judge who will do the work as second city civil court judge ?

A. That will reduce the number of cases in the High Court.

Q. How many judges are there on the Original Side of the High Court ?

A. Generally two.

Q. During the whole year ?

A. Occasionally there is only one judge and the other judge has to do insolvency work.

Q. Having regard to your experience of the Madras High Court you are of opinion that the work of the High Court will be materially reduced if another city civil court judge is appointed ?

A. Most certainly.

Q. And there will be no objection from the public or from your association ?

A. No.

Mr. Justice Stuart.—Q. Can you tell me please, when a suit is filed, how long does it take to come on for final hearing, that is the period from the institution of the case to the final hearing of the case ?

A. From two to two and a half years.

Q. And what about suits on list 'B' ?

A. Roughly speaking about 18 months .

Q. And are things getting worse or better ?

A. I should think worse because the number is on the increase.

Q. I do not want to know the reasons. So things are getting worse. Supposing you file a suit on the Original Side of the High Court in the month of August of the present year, it will certainly not come up for hearing in 1925, and you will be lucky if it is heard at the end of 1926. Things are getting worse. How many suits are there instituted on the Original Side of the High Court ?

A. About 1,000 are filed every year.

Q. And if they are contested the parties are not likely to get a decision for two years. If the suit is contested there is almost invariably an appeal. How long will an appeal take ?

A. About a year.

Q. So that in many matters of importance such as ejectment from a house or anything of that kind, a man will consider himself lucky enough if it is settled within four years ?

A. Yes.

Q. How much does a city civil court judge get as his salary ?

A. He gets about 1,500 and the Judges of the High Court get Rs. 4,000.

Q. So on your suggestion you are creating another judge on Rs. 1,500 as against Judges on Rs. 4,000 ?

A. Yes.

Mr. A. RANGACHARIAR, Representative of the Madras Vakils' Clerks Association, Madras.

Written Statement.

1. It can hardly be denied that there is delay and sometimes inordinate delay in the disposal of suits and appeals. The causes that contribute to such delay are manifold and depend upon various factors. The rules of procedure now in force are to some extent responsible, and, any reform that would facilitate expeditious disposal would be readily welcome. But, however, in effecting such reforms, it has to be clearly kept in mind that the function of processual law is merely to set in motion the machinery of courts to procure a decision for enforcement of rights. If the rules of procedure are made stringent and technical with a view to secure a speedy disposal of litigation, and, without due regard to the conditions of the community in which they are to be applied and enforced, it is obvious that they would defeat the purpose for which they are intended and the consequences would be regrettable.

2. The questionnaire has been framed on the footing that changes in substantive and processual law would facilitate quicker disposal, but, I feel highly doubtful whether the changes indicated would achieve the object intended. I do not propose in this statement to discuss the changes that might be necessary in the substantive law except in so far as they might have any bearing on the rules of procedure.

3. *The main causes of the delay are :—*

(*a*) Ignorance, natural dilatoriness, poverty and unbusinesslike habits of the people.

(*b*) The services of processes and summons to the parties and witnesses, to some extent.

(*c*) Indiscriminate posting of cases and the length of time taken for disposal after they are got ready.

(*d*) Printing records.—(1) Mofussil, (2) High Court.

(*a*) The practitioner who is instructed to conduct a litigation is not given proper and correct information for the drawing up of pleadings at the initial stage. As often as not, amendments become necessary. Until the suit becomes ready for trial the client does not take the necessary steps to be ready with the requisite evidence and the attendance of witnesses at the trial. It must also be said that owing to such imperfect instructions, the practitioner finds that important witnesses who ought to have been called are not summoned and an adjournment has to be granted if the party is not to suffer. That litigation has been made costly is a constant cry, and there is much to be said in its favour. The litigant population in this province being mainly the middle and poor classes, dependent for their livelihood upon agriculture, a *bonâ fide* litigant often finds that the costs he has to incur for the conduct of a litigation are heavy and sometimes crushing, and in the present state of the money market he finds it almost impossible to find funds and in many cases he finds that his success is an empty one and that he was neither gainer nor loser.

(*B*) *Service of Processes. Mofussil.*—I do not think that there is much wilful evasion of service in the case of summonses in suits. If the procedure in the civil rules of practice is strictly adhered to there would be no difficulty in the service of processes, unless the party intended to be served refuses or purposely evades service, in which case there is sufficient provision for declaring the service good or taking out substituted service, unless the process server colludes with the party intended to be served. I think the procedure under section 106 of the Transfer of Property Act or the extensive use of the post office for service of summons and notices or entrusting the same to the village officials over whom the court could not exercise an efficient check for their due service would give room to greater fraud and corruption than at present. No doubt there is a constant complaint

by the litigants, of the fraud played by the process servers, and if the presiding judge exercises proper and effective control over the serving establishment, the evil may be put a stop to.

High Court.—The present practice as to the service of summons on the defendant in the suit is complicated and could be made much easier. Along with the plaint summonses in duplicate to the defendants are filed and after the admission of the plaint they are handed over to the vakil for lodgment in the sheriff's office together with the sheriff's batta of Rs. 2 for each defendant in addition to the court-fee of Rs. 2 affixed for issue of summonses to each defendant. After lodgment (the time generally fixed for return of the summons being 4 months), the party has to await the convenience of the bailiff in order to get the summons served, and in almost all cases he has to take the bailiff, incurring incidental expenditure.

Instead of the above practice the summons filed along with the plaint may be sent to the sheriff's office straight, the necessary fee being collected beforehand in the shape of court-fee and requiring the bailiff who is entrusted with the summons to report himself to the vakil for the plaintiff to fix a time to enable the party or his agent to accompany him to identify the defendant. This would in practice save time.

Appeals, Second Appeals and Miscellaneous Appeals, etc., Revision Petitions.

In addition to the notice taken out in the appellate courts under the existing rules of practice, a rule might be made that, simultaneously with the issue of notice by court, a notice by registered post might also be sent direct by the practitioner in charge of the proceeding and the postman delivering the notice might be directed to take the thumb impression of the party in the acknowledgment receipt. I would make another suggestion and it is this. As soon as the defendant in a suit is served he might be called upon to furnish a registered address for service in addition to the address of the practitioner who is in charge of the case under the existing rules. While furnishing the additional address the party might be cautioned in the summons itself that the address so given is for purposes of appeal and other proceedings and any process which might be taken out would be sent only to that address. This would facilitate the service of process throughout the stages of suit, appeal and second appeal.

Notices, Execution.—Mofussil.

Evasion of service is more often found in execution of the decree than in suit or appeal. The reason for such evasion is obvious and it is common knowledge that a decree holder's woes begin only after decree. I would suggest that an initial notice to the party, as soon as execution is applied for, even though the decree is not more than a year old, would be conducive to the expeditious execution of the decree and to avoid the issue of further notices. The difficulty would sometimes arise in cases where the judgment-debtor does not engage a pleader, but that could be obviated by the insertion in the first notice itself that unless an address for service is registered in court for service of further notices, he shall be deemed to be duly served. Such further notices as are necessary and expedient may be sent to the registered address by post. In case of the judgment-debtor being dead, I would suggest the same procedure as indicated when the legal representative is brought on record.

High Court.—The procedure followed in the High Court is cumbrous and could be made easier. The present practice is this. When an execution application is filed in court after the usual checking by the office, it is placed before the registrar for orders as prayed for in the execution petition. When it comes for orders before the registrar it is not known. After the Registrar passes the necessary orders another application has to be put in for the issue of a writ of attachment or a warrant for arrest. Then the writ is to be taken to the sheriff's office and lodged, together with the necessary fee. Then the party has to await the convenience of the bailiff and get the writ executed. It is obvious that much of this

could be avoided by following the simpler procedure under the Civil Rules of Practice.

(*C*) *Indiscriminate posting : Mofussil. Original Suits.*—(i.) The system of posting cases in the mofussil does contribute in a large measure to delay. The presiding judge does not consult the practitioners when the cases are posted as to whether they would be ready with the cases on the dates to which they are posted and what length of time the trial is likely to take. A large number of cases are posted for a day and more often, not more than one or two cases are disposed of and the rest would have to stand adjourned. The expenses which a litigant would be put to in consequence could be easily imagined. It may also engender a hope in the mind of the litigant and induce him not to take necessary steps for the adjourned hearing in the likelihood of his case not being taken up on that day in view of the large number of cases posted.

(ii). *High Court—Original Suits.*—The practice now prevailing as to posting of causes is to be deprecated. Suits which are ready for hearing are posted in the order in which they become ready. The result of such posting is that though it may not affect very much the parties and witnesses resident in the Presidency town and productive of any great delay, yet it does work great hardship to the parties and witnesses in case any of them happens to reside in the mofussil. Consequently in such cases adjournments have to be applied for on the ground of the party not being ready because he does not know when his case will be taken up. Some times it may be days and sometimes months. The practice initiated and followed by His Lordship Coutts Trotter C. J. of consultation with the practitioner on the last day of every week for the purpose of settling the list of cases to be heard on the following week, was of great convenience to the litigant public and the practitioners.

Appeals from Subordinate-Courts and District Courts to High Court.

(*D*) *Printing.*—Generally speaking the printing of records in the High Court in first appeals, miscellaneous appeals, second appeals, etc., is necessary for their proper determination. But whether any printing is necessary or not may be left to the discretion of the practitioners. In cases where they consider that no printing is necessary, the penalty of not looking into documents which are not translated and printed should be removed. Why I am of opinion that the record should be printed is that it is not only of very great convenience for the practitioner to study beforehand but it tends also to quicker disposal.

I would make the following suggestions as regards printing. In the cases where the parties want to appeal against the decree of either the subordinate court or the district court in original suits and tried by them, the printing of pleadings might be entrusted to the lower courts themselves in a form fixed by the High Court. The documents which are in English and which the parties require for use in the High Court may also be printed in the lower court. The effect of such an arrangement would be to relieve the press here of congestion from a large amount of work which, it must be admitted, causes delay. The printing thus distributed would avoid much of the delay which is now caused in printing. I would also prefer the documents being translated and printed by the above mentioned courts for this reason, *viz.*, that practitioner who conducted the case would know what documents are material for use in appeal and it would obviate not only delay but unnecessary expense to the parties. A receipt might be passed for the actual cost of the printing to the party and such bill might be accepted by the High Court in taxing the costs for the appeal.

Appeals from Munsif's Court to District Court.

In an appeal from a munsif's court to the district court greater time than is necessary is taken up in printing the judgment probably owing to presses not being located within easy reach. Under the present practice the respondent is not given a certified printed copy but only a typed or written one of the judgment for his use

in the appeal. There is no intelligible reason why such a procedure is followed. I would suggest that type-written copies of judgments may be used in so far as appeals from the munsif's courts to the district courts are concerned. That a great amount of time would be saved is obvious.

5. *Pleadings—Mofussil.*

I do not think that the provisions of Orders 7 and 8 are neglected in this province. Amendment of pleadings which may often arise in the course of trial are necessitated by the imperfect instructions of the parties as already stated, and to some extent by the case law. The forms of pleadings given in the civil procedure code are not exhaustive nor is it possible to frame forms to cover all possible cases and contingencies. A compliance with the requirement of Order 7 with regard to the particulars to be mentioned in a suit should be sufficient and any attempt to penalise non-adherence to prescribed forms will lead to injustice. So far as the High Court is concerned, there seems to be very little complaint as regards the manner in which the pleadings are drafted.

6. *Issues.*

I do not think that the rules as to framing of issues are strictly adhered to in the High Court as well as in the mofussil courts. Issues are generally framed by the pleaders concerned with such information as they possess and without the assistance of the parties, filed in court, and passed by the judge. An examination of the parties at the settlement of the issues may be beneficial in so far as it may be necessary to ascertain on what material issues of fact or law they are at variance and if the judge follows the procedure laid down, indiscriminate summoning of witnesses and protraction of the trial may to some extent be avoided.

I think the examination of the plaintiff and the defendant after the settlement of issues as part of the trial would work very great hardship in many cases and is likely to give opportunities to parties to manufacture evidence and to tamper with the witnesses.

7. *Summons to Witnesses.*

In the High Court the party is entrusted with the service of summons to his witness and the same procedure might well be adopted in the mofussil except in cases where the party himself wants that service should be effected through court.

8. *Discovery, Inspection, etc.*

In the High Court the rules as to discovery, inspection, etc., are mostly adhered to, but in the mofussil Orders X, XI, XII, C. P. C. are neglected. The consequence is protracted trial.

9. *Trial.*

As already observed the procrastination and the unbusinesslike habits of the people contribute to the protraction of the trial. The practitioner who is in charge of the case has to find out during the course of the trial what evidence is relevant and, if such evidence is not available at once, he has to ask for an adjournment or to go on examining witnesses absolutely unnecessary to enable him to gain time for the production of the relevant evidence. Further, the court trying a heavy case would not, under the present system, be able to devote more than an hour a day for a suit, and it has to give preference to short cases in order to enable it to show greater disposal in the quarterly return to be submitted by it.

I do not think that any useful purpose would be served in fixing a time limit on the examination of witnesses. The court at present has power and does put a stop to the practitioner asking irrelevant questions and wasting the time of court. Any fixing of time limit as is suggested would work great hardship and ultimately result in injustice being done.

I do not think that the insistence of any written applications for adjournment would facilitate quicker disposal. The practice now generally adopted is to insist upon such applications being filed perhaps more for the purpose of the quarterly returns.

The courts are always averse to disposal of suits on preliminary points of law going to the root of the suit partly to avoid a remand and partly owing to the observations by appellate courts that the judge was wrong in not having decided all the issues when the evidence was available.

I do not think that the judgments delivered are long and disproportionate to the case.

I may here observe that if the suits are posted after due consultation with the vakils and if the suit is tried on the day to which it is posted or on the next adjourned day, the time requisite for such disposal would not exceed more than a year either in the High Court or in the mofussil courts.

10. Order 41, Rule 11 is not strictly enforced in the mofussil, and, in my opinion, rightly so. In most cases the party generally does not get all certified copies of documents and depositions of witnesses within the time limited for appealing. The court as well as the practitioner would be handicapped if an appeal is posted under Order 41, Rule 11 as soon as it is presented. Assuming that copies of the requisite documents are got, the court will have to hear an elaborate argument on questions of fact before it could come to a conclusion whether the appeal is to be rejected or not. The question is whether it is expedient under the circumstances to hear such elaborate arguments. If the other party is represented, often times such elaborate arguments may not be necessary.

High Court. Order 41, Rule 11.

First appeals are not posted under Order 41, Rule 11 for obvious reasons.

Second appeals are posted under Order 41, Rule 11 in cases where the Judge to whom the papers are previously circulated thinks that none of the grounds as are mentioned in Section 100, Civil Procedure Code exist. Ultimately the second appeal is posted before a Bench of two Judges to avoid a Letters Patent Appeal. No hardship could arise by second appeals being posted under this Order.

Civil Miscellaneous Appeals, Second Appeals, Revision.

In most cases which involve either points of law or a consideration of evidence they are usually admitted by the registrar in the usual course unless he thinks that the appeal has no merits, when it is posted under Order 41, Rule 11.

Revisions are generally posted under Order 41, Rule 11 unless the registrar thinks that the case is such that a notice ought to issue at once.

Revisions are generally filed in the High Court (1) under Section 115, Civil Procedure Code and 107 of the Government of India Act and (2) under Section 25 of the Provincial Small Cause Courts Act. Revisions filed under Sections 115 and 107 are generally directed against orders passed in interlocutory proceedings in a pending suit in the lower Courts and I think that such revision ought to be allowed. If the revision petition filed would go either to the root of the whole proceedings pending in the lower court or if interference in revision would save the parties concerned from unnecessary expenditure and trouble and loss, then, such remedy ought to be allowed, even though the party complaining in revision may be entitled to raise the same question in appeal from any final decree or order passed.

Letters Patent Appeals.

I do not think that any frivolous Letters Patent Appeals are now filed and the practitioners do not generally advise such filing unless they think that the order passed is manifestly wrong.

I do not think that many frivolous second appeals are filed in the High Court. In money suits of the value of less than Rs. 500 no second appeals are allowed at present and the right of appeal in title and other suits should not be curtailed.

I am not agreeable to the suggestion as to the appellant being compelled to deposit the full amount of the decree before filing a second appeal as it will affect many who may have good or arguable cases.

11. On an average it may be said that an appeal does get ready within 6 to 9 months, a miscellaneous appeal and revision petition within 4 to 6 months. Any further delay after the records are got ready must be attributable to other reasons.

12. *Legal Representatives.*

It would work very great hardship to throw the duty on the legal representative to come forward and request the court to add him as a party on pain of his being bound by the decree in case he was aware of the proceedings. Both in the original court and the appellate court it would necessitate an investigation as to whether the legal representative was or was not aware of the proceedings, and especially in the appellate court such investigation being possible only on affidavits. Sending for enquiry and report to the original court in case of contest, would take a much longer time than it does under the present system wherein, the appellant or petitioner is compelled to take the necessary steps within the period limited.

13. *Guardians.*

I approve of the suggestion that instead of successive petitions being filed as each guardian refuses to act, an application including the names of alternative guardians and sending notices to them simultaneously would work very well in practice and such a change is very much to be desired.

14. *Execution.*

Order XXI, Rules 1 and 2 work very great hardship in practice and are productive of fraud. Even though the court finds that payment has been made in a discharge of the decree it is powerless to refuse execution if payment is not certified within ninety days by the judgment debtor. I would suggest that payment through post office or the vakil of the party to whom the payment is made or payments made before the sub-registrar may be held as valid payments for purposes of execution.

I am agreeable to the extension of the principle in section 21, Civil Procedure Code to procedings in execution and also to investing of courts to which a decree is transferred for execution with powers to add legal representatives, to recognise assignment of decrees and other such powers.

The language of section 47 may be modified so as to include proceedings taken by an auction-purchaser to obtain delivery of the property purchased.

I am not agreeable to the curtailing of the period of 12 years given in section 48, Civil Procedure Code whatever may be the nature of the decree. I would also suggest the deletion of article 182 of the Limitation Act and allow the decree holder to execute his decree within 12 years as in the manner of execution of the decree of the High Court, Original Side. The practical effect of this is to do away with a number of appeals which arise on the interpretation of article 182.

I am not in favour of allowing the transferee of a decree to execute, pending investigation as to his right to execute for two reasons *viz.* :—

(i). It would prevent an enquiry as to whether the ostensible assignee is benamidar for one of the judgment debtors.

(ii). If it is ultimately found that he had no title, all the proceedings in execution would become infructous.

I am in favour of abolishing Order 21, rule 21. In some cases issue of simultaneous process tends to quicker realisation of the decree and avoids fraud being played by the judgment debtor.

I am not in favour of entrusting warrants for arrest to village officials.

Stay of Execution.

It must be admitted that some delay is caused by frequent orders staying execution proceedings. But the appellate courts do, as a matter of fact, grant costs in case stay was applied for on insufficient grounds. If it is found that the application was on flimsy grounds and the court dismisses the petition, it is just that the party making such applications should be mulcted with exemplary costs taking at the same time into consideration the expenses and trouble the other party is put to by such an application.

I am of opinion that arrest and attachment before judgment do to a very great extent help the decree holder in realising his decree and prevents judgment debtors from absconding.

15. I am of opinion that certified copies may be used more extensively without production of originals in case it could be done without prejudice to the parties, and printed papers in the High Court may be deemed to be certified copies.

It is the general complaint of the litigants and I too am of the same opinion that the court-fees at present are high and any further enhancement of court-fees would be tantamount to denial of justice.

It is not proper to tax a large number of *bonâ fide* litigants with prohibitive court-fees with the object of putting down a small number of frivolous suits. I am also of opinion that the court-fees should be reduced to the old scale.

Practitioner's Clerks.

One important point which is not covered by the questionnaire and which deserves consideration by the Committee is the status, qualification and remuneration of the practitioner's clerks.

In Madras, it would be admitted, that the remuneration paid to the clerks is quite disproportionate to their needs under the existing conditions, as to the cost of living. To make both ends meet a clerk has necessarily to look to the clientele for remuneration and any disinclination on the part of the clients to pay would naturally result in the clerk not paying such attention as is necessary in respect of the business of the client in court. If rules of procedure are made providing for remuneration to be paid to clerks by the clients on a fixed scale, to be included in the costs to be finally awarded by the decree, some amount of delay in the conduct of the suit or appeal would thus be obviated. The practice in England is that counsels' clerks are paid fees in proportion to the counsels' fees and such fees are taxed and included in the costs. To enable a clerk to do the business entrusted to him satisfactorily it will be conceded that a certain amount of general education and training in practice and procedure is necessary. I would suggest that an oral or written examination may be held for persons who want to be registered as clerk?, after they have undergone a prescribed course of training as apprentices in a practitioner's office under a registered clerk of some standing. It is quite obvious that such preliminary training would lighten the work of a practitioner who would otherwise have to attend to minor details. It would also give ample time to the practitioner to get ready for the conduct of the cases.

Mr. A. RANGACHARIAR, Clerk of the Advocate General and Representative of the Madras Vakils' Clerks Association called and examined on Saturday, the 9th August 1924.

Sir T. Desikachari.—Q. Mr. Rangachariar, you have considerable experience as a vakil's clerk.

A. Yes. I have got experience for the last 30 years.

Q. You are the President or the Secretary of the Association ?

A. President of the Association.

Q. What is the strength of the Association ? How many clerks are there on the rolls ?

A. 50 or 60 members.

Q. Are all of them residents of Madras ?

A. Yes.

Q. They are all clerks of Vakils practising in Madras ?

A. Yes. There are also Attorneys' clerks and Barristers' clerks.

Q. In the very last part of your memorandum you make reference to a very important matter and that is with regard to the training, status and remuneration of vakils' clerks. Now, with regard to training, I suppose they have very little training ?

A. Yes.

Q. Any person can become a vakils' clerk ?

A. Yes.

Q. Need he be literate ?

A. He need not be literate. He must know something of English.

Q. If he could speak a few words in English like an ordinary Jutkawalla that is quite enough ?

A. It is enough at present.

Q. If this is the state of things—which you don't like to continue—what would you do to rectify the existing evil ?

A. There must be some examination fixed for that.

Q. What sort of examination do you require ?

A. Some general examination as to the practice prevailing in courts.

Q. Who is to hold that examination ?

A. The Association may hold it.

Q. Do you mean the Vakils' Association ?

A. No. The Vakils' Clerks Association.

Q. They themselves have to hold an examination ?

A. Yes.

Q. Your idea is that only those people who have got a certificate from that Association after undergoing a test should be enrolled as clerks ?

A. Yes.

Q. I suppose the vakils' clerks are now registered as such in the High Court ?

A. Yes.

Mr. Rao.—*Q.* Do you wish to simply examine them or to give them a training ?

A. Both examination and training.

Q. Your Association would undertake the training ?

A. If they are attached to some senior clerk they will be trained.

Sir T. Desikachari.—*Q.* What about the mofussil clerks ?

A. I cannot say anything about the mofussil.

Q. What would you do with regard to them ? Will you make a similar recommendation with regard to them also ?

A. The court language being the vernacular, they may be trained in any way. of course they must have some training.

Q. What do you say ? Do you think any training necessary for clerks of vakils practising in the mofussil or not ?

A. There must be some training.

Q. That must be determined by your association ?

A. Not by our association. There are associations in the mofussil also.

Q. It may be left to them to do it ?

A. Yes.

Q. Now, you think some sort of training is necessary before a person can become vakil's clerk ?

A. Yes.

Q. I suppose the vakil's clerk has to do most of the routine work of the vakils ?

A. Yes.

Q. He has to present batta memos., take the plaints and present them in courts and pay process fee for witnesses and serve affidavits upon other vakils. Most of the things that have to be done under the Code seem to be done by the vakils' clerk ?

A. Yes.

Q. If the vakil's clerk chooses to delay matters he can ?

A. Yes.

Q. Very often he will choose to delay matters if he does not get his tiffin.

A. Some people do it and some people do not.

Mr. Radhakrishnaiya.—If the vakils have proper supervision over their clerks such things may not happen.

A. Yes.

Sir T. Desikachari.—*Q.* You seem to think that vakils' clerks are in a position to delay matters if some additional fee is not paid to them ?

A. It is natural. I don't think they do.

Q. The question is not whether it is natural or unnatural. I am trying to get at facts. Is it a fact that a client has to pay not only to the vakil but also to the vakil's clerks ?

A. Sometimes they pay.

Q. The person that does not pay would not have his work done quite as expeditiously as the person who pays ?

A. Yes.

Q. In that way I suppose some sort of extra expenditure must be incurred by each client ?

A. Yes.

Q. That is over and above the vakil's fees and the court fees ?

A. Yes.

Q. What is your suggestion with regard to this matter ? Instead of having this fee about which there is no rule, you would like to have some sort of fee fixed for the vakil's clerk.

A. Yes, some percentage.

Q. You want to have the fees fixed just as counsel's clerks take fees ?

A. Yes.

Q. What percentage of fees do you require ?

A. 5 per cent.

Q. On what ?

A. On the vakil's fees.

Q. That will be in addition to the fees paid by the client to the vakil. You think that another 5 per cent of the fee fixed for the vakil must be made legal as part of the costs ?

A. Yes.

Q. Unless that is done you think that this sort of exaction will go on ?

A. Yes.

Q. If you want to have things done speedily and minimise delay, you want to improve the status of the vakil's clerks and their remuneration ?

A. Yes.

Mr. Sastri.—*Q.* Do you want the fee to be fixed in addition to their pay or in substitution ?

A. In addition.

Sir T. Desikachari.—*Q.* What is the salary generally drawn ?

A. Rs. 25 to 30 a month.

Q. I suppose some vakil's clerks make large sums as additional remuneration and others less ?

A. Yes.

Q. Have you any further suggestions to make for the improvement of the vakil's clerks as a whole ?

A. I have nothing to state in addition to what is stated in the memorandum.

Q. There is another point that you have referred to and that is about the costs of litigation. You say that the litigant, when he comes out successful in the second appeal, is not a gainer at all ?

A. Of course he loses everything.

Q. With the money spent in the first court, the first appellate court and in Madras, though at the end of it all he is nominally successful, he is really a loser.

A. Yes.

Q. How could you prevent this ? You complain about it. What is the remedy ? You have been managing clients for a very long time. Let us know what you think of the matter ?

A. Of course the whole value of the property will be spent on the litigation.

Q. That is not a desirable state of affairs. Is it ?

A. It is not.

Q. How would you prevent it ?

A. I am not able to say.

Q. You only wished to draw attention to that fact ?

A. Yes.

Q. How is this extra expenditure incurred ?

A. By coming to Madras several times.

Q. If there is a second appeal on the ready board, at once the vakil's clerks write to the client. He comes here possibly assisted by his relations and they stay here for 2 or 3 days.

A. Some weeks and some months.

Q. Sometimes the cases are not taken up and then they go back and come again. In that way this expenditure is incurred so far as second appeals are concerned ?

A. Yes.

Dr. DeSouza.—*Q.* Supposing a man from the Tinnevelly district files an appeal, will you give the Committee a rough idea as to the amount of expenditure which he will have to incur, I mean his actual out of pocket expenditure ? Of course, first of all he will have to come with his judgment and decree to Madras to show it to

his pleader and he will thus perform one journey between Tinnevelly and Madras. How many days will he stop at Madras for that purpose ?

A. About a week or ten days. After giving instructions to the vakil, he will next apply for stay of execution and will have to come again and stay here for about five or six days.

Q. So he has performed two journeys ?

A. Then he has to come for interim proceedings and up to this he has to make three journeys.

Q. And has he to come again ?

A. Then after the case is ready we will write to him and he will come again Some people at that stage stop here for months together and some people go away after waiting for some days.

Q. So an appellant has to perform four journeys and his stay is for about a week each time and that will account for much out of pocket expenditure ?

A. Yes.

Sir T. Desikachari.—Q. How would our clients like to have all this expenditure avoided by not having second appeals in cases in which the property would not pay the expenses ?

A. They would always like to file appeals.

Dr. DeSouza.—Q. How are second appeals posted—first of all on the ready list, then on the weekly list and then it will be posted on the day list ?

A. Yes.

Mr. Rao.—Q. For how many days have you to appear when it is posted on the day list ?

A. For several days.

Q. Do they post more work than they can actually do ?

A. Usually there are 10 or 15 second appeals each day, but only 8 or 10 are disposed of and the rest are postponed to the next day.

Q. Are they posted at the top or again at the bottom ?

A. At the top.

Sir T. Desikachari.—Q. There is another matter, and that is with regard to the service of processes. I think in such matters the opinion of a person of your experience must be valued. You seem to think that there is no real evasion of service so far as the service on the defendant is concerned. That is your idea ?

A. Yes.

Q. But you think that there must be some effective supervision over these process servers ?

A. Yes.

Q. What for ?

A. So that the process servers may serve processes properly.

Q. Do you mean to say that they sometimes collude with dishonest defendants and that the process servers are apt to be open to temptation ?

A. That is the complaint every where.

Q. And that if the presiding officers have a stricter eye upon them this thing can be avoided ? You do not want any alteration in the existing law relating to process-servers ?

A. No.

Q. With regard to the service in the High Court you seem to complain that it is complicated and causes delay. What have you to do before the summonses are issued ?

A. We file the summons along with the plaint. That is with regard to the Original Side of the High Court. We have to file copies of the plaint as well as

the necessary papers and along with all this a summons. After the plaint is filed they issue the summons to us *i.e.*, to the vakil's clerk. We have to take it to the sheriff's office and then we have to go to the bailiff and see what time suits him. There is no delay in the sheriff's office, but it is with the bailiff.

Q. The bailiff is deputed to serve the summons ?

A. Yes.

Q. And then you have to wait upon him and arrange the thing with him and you have also to pay him some remuneration ?

A. That has not been my experience.

Q. What do you suggest ? Apparently there are four stages before a defendant can be served ? What is your suggestion ?

A. My suggestion is that as soon as the summons is issued the sheriff's office instead of sending it to the bailiff should send it to the vakils' clerks.

Q. Do you mean to say that instead of the vakil's clerk waiting upon the bailiff, the bailiff should wait upon the vakil's clerk ?

A. No. I mean to say that the sheriff should be in communication with the vakil's clerk and they should fix a convenient time to the bailiff.

Q. That you would like to do both on the Original Side and the Appellate Side ?

A. On the Appellate Side it is sent to the lower court for service.

Q. What would you do with regard to second appeals ?

A. That is also sent to the lower court for service.

Q. And it often is returned unserved ?

A. For that I have suggested that when a suit is filed, the parties should give their registered addresses and these should be sufficient for second appeals.

Q. Your suggestion is that there must be some rule that registered addresses should be given by the parties themselves and they should serve until the case is decided in the High Court, and that if there is any change in the address the parties should send intimation to the court ?

A. Yes.

Q. Would you keep that registered address for the purpose of execution ?

A. No. There must be another registered address, because the vakil will say he has no connection with the matter.

Q. With regard to printing, you seem to think that, though some printing is necessary, the printing that is at present going on is unnecessary ?

A. In first appeals it is unnecessary. In the High Court delay is simply due to printing of documents without considering whether they are required or not.

Q. What is your suggestion ?

A. My suggestion is that the vakil should be allowed to choose the papers that should be printed, and then printing should be done according to certain rules prescribed. It would be better if the printing is done by the district court *i.e.*, the first appellate court. Documents should also be translated there if they are in vernacular.

Q. So your suggestion is that printing and translation should be done in the district court ?

A. It should be done at the direction of the High Court and according to the form prescribed by it.

Q. You seem to think that judgments need not be printed, and that typed copies are enough ?

A. Yes, in the munsifs and the first appellate courts. They are printed twice now.

Q. That causes a lot of delay ?

A. Yes.

Q. As regards the summonses to witnesses your idea is that summonses might be handed over to vakil's clerk. Do you mean that the vakil's clerk would find it convenient to do so ?

A. Yes, then there will be no summonses unserved.

Q. They can do so perhaps in Madras where you have a very small radius. But take the district of Madura. Is it possible to have it served in a place like Arantangi ?

A. When it is outside the jurisdiction it may be served through the courts.

Q. You know generally munsif courts have a jurisdiction to the extent of 60 miles. Do you mean to say that a vakil's clerk can be expected to serve then ?

A. Then the party may take it.

Q. So you think that the vakil's clerks are in a position to do that ?

A. Yes.

Q. Is it a practical proposition ?

A. Yes, then no summons would be left unserved.

Q. With regard to attachment of decrees you seem to have some experience. You think that the demand for payment of a decree may be made out of court. What is your point exactly ? You don't want the three months rule ?

A. I don't want it.

Q. You say that payments evidenced by money order receipts or payments through post, or before a sub-registrar must be recognised even after three months ?

A. Yes. That is my suggestion.

Mr. P. R. GANAPATHI AYYAR, High Court Vakil, Madras, called and examined on Monday, the 11th August 1924.

Witness Statement not printed.

Chairman.—Q. I see that you are a little nervous of the desire to speed up the law courts, which, you think, might result in excessive pace. Is there any great danger of excessive pace ?

Mr. Ganapathi Ayyar.—A. I thought that that consideration should also come into the administration of justice.

Q. What consideration ?

A. That you should not be speedy in the administration of justice.

Q. You mean that justice should not be sacrificed to speed ?

A. Yes.

Q. I rather gather, going round the country, that people do not in the least want to get rid of law's delays. They rather like that. Do you think that there is any great feeling in Madras to that effect ?

A. Until this Committee was appointed, people had no grievances.

Q. So the only grievance is in the appointment of the Committee ?

A. I do not know that.

Sir T. Desikachari.—The appointment of the Committee may have made them to realise the existence of the greivances.

A. They were aware that there were delays.

Chairman.—Q. Do you not think, as a matter of fact, that suits taking two or three years or more to come on for first hearing, and taking seven years or more to be decided are rather worse grievances ; that amounts to denial of justice ?

A. Suits taking up a long time for disposal are really a blot on the administration of justice. Of course, as a matter of fact, apart from a suit taking seven years, I have seen suits taking twelve or fifteen years.

Q. We have been looking up a certain number of cases, " B " diaries and returns, and it seems to be pretty plain that in Madras it is not a question of justice being done too speedily, but a question of trying to save justice from being blocked altogether ?

A. More or less it is due to the fact that the judiciary is undermanned.

Q. That is another question. I only wanted to make sure of the existence of delays. You cannot dispute that ?

A. No.

Sir T. Desikachari.—Q. You are Secretary of the Dharma Rakshana Sabha and you have certain suits which are pending for over five, ten or fifteen years ?

A. I can give you an instance of a suit pending for fifteen years.

Chairman.—Q. I particularly want to ask you about schemes, because you are the only gentleman, who has taken up that aspect of the law and who has paid special attention to it. You are representing a *sabha*, well interested in these matters. As I understand, the difficulty is that suits are brought under section 92 of the Code, but under that section you cannot implead stranger alienees with the result that you get a suit which takes a long time to try in order to suit the nature and the conditions of the endowment and only then proceedings start to recover the property which has been wrongly alienated.

A. Yes. Some endowments are lost because there is a limitation bar.

Q. That is to say you cannot get a suit under section 92 sufficiently advanced to have a proper plaintiff constituted before a cause of action comes on ?

A. Yes.

Q. Have you thought whether the law of limitation may be altered in any way to meet such a case ?

A. I have suggested the alteration.

Q. Now, just explain to us what the proposed amendment is ?

A. The Privy Council has now held that so far as improper leases are concerned there is no limitation. The successor has got a fresh start. But as regards out and out alienation the Privy Council recently distinguished and held that limitation would start from the date when the alienation is made and possession handed over to the other alienee.

Q. Article 144 of the Limitation Act ?

A. Yes. The amendment I suggest is this. So far as the non-religious portion is concerned, the limitation is sixty years according to a rule of the privy council. I suggest that the same limitation might be applied, namely a period of sixty years from the date of alienation, so that it may not work hardship to any person.

Q. That is to say where it is a religious endowment you will put it on the same footing as a public charitable endowment, for which the present term is sixty years ?

A. Yes. In fact some judges have suggested that the period should be sixty years

Mr. Justice Stuart.—Q. Your remedy will in no way quicken up the proceedings. The proper remedy is to see that these cases are taken up promptly ?

A. But it is very difficult to get suits instituted under section 92.

Q. But it is not a question of getting them instituted. The question is of getting them heard. I have here a case from Chingleput. It was in connection with a temple for which a committee was appointed under the Act of 1863. The trustees of the temple were interfered with by two dismissed trustees, who hindered their possession. I find that on an absolutely elementary point the suit was kept pend-

ing for three years. The judge did nothing for three years, and he went on giving adjournments every three months ?

A.—That is why I say that the delay is also due to the fact that the judges have no time.

Sir T. Desikachari.—May I put it to you, Mr. Ganapathi Ayyar, that so far as scheme suits are concerned it apparently does not pay any judge to take them up. Neither do the parties seem to be anxious to have them finished.

A. Yes. Parties are not inclined, I do admit. There is some disinclination also on the part of judges.

Q. You are aware that suits are now pending for six or seven years ?

A. Yes.

Chairman.—*Q.* Coming back, you say that for religious endowments there is a limitation period for 60 years. Which article are you referring to ?

A. The article that has been applied by the Judicial Committee. The case I am suggesting is this. Under the regulations property is vested or the management is vested in the Board of Revenue, whether hereditary or not, so that when the suit is brought the suit is brought on behalf of the Government.

Q. Your case is under what article ?

Sir T. Desikachari.— Under article 149.

Q. You say that if a plaintiff dies or somebody is wanted to be added as a party there are difficulties under section 92 ?

A. Yes.

Q. The constitution of the suit is altered and it ceases to be the exact suit that is sanctioned. Would you make it a rule that any addition of parties and such things are quite open to the judge and that substitution of parties for the same general purpose might be made by him ?

A. Yes, there is decision of the privy council to that effect.

Q. You mean the absence of clear statutory enactment leads to a lot of these objections ?

A. Yes.

Q. I understand you to say that for the past 15 years and more every other suit that is brought in a sub court or a district court in Madras is brought under section 92 or is connected in some way with trust ?

A. Yes, there is a great volume of work of this sort in the Madras courts.

Q. You suggest that some officers should be specially selected to dispose of these ?

A. Yes. Otherwise these arrears could not be cleared.

Sir T. Desikachari.—*Q.* Is it a fact that during the last one or two years and more there are less number of suits ?

A. Yes, last year it was less.

Q. It is inferred that a large number of suits were suddenly instituted having regard to the new Religious Endowment Act being passed. Is that the cause ?

A. Yes. There was a Religious Endowment Bill which had provisions preventing suits from being brought, and repealing section 92 with reference to these religious trusts. In consequence of this very many suits were brought.

Chairman.—*Q.* What is the point with that Bill ?

Sir T. Desikachari.—That bill was passed by the local Legislative Council and was sent to the Government of India for consideration. The Bill was sent back for reconsideration by the Government of India and when it came back it was again passed and it is now awaiting the sanction of the Viceroy.

Chairman.—*Q.* Is that a matter on which there was a good deal of controversy ?

A. Yes, there was a good deal of agitation over that.

Q. So the whole question of the preservation of the public religious endowment is therefore under the careful consideration of the local Legislative Council and they are the people who have to deal with it. You make a good deal of suggestions as regards the procedure in the courts below. I see that the main points you make are points that have been raised before us from time to time. In scheme suits do you find that the court, when it settles a scheme, proceeds on an unsatisfactory principle or do you find them satisfactory? For instance are there any provisions which are getting to be commonly introduced that are objectionable?

A. I don't understand.

Q. Are there any practical suggestions that you can make with regard to scheme suits?

A. So far as appointment of trustees are concerned it is a business which ought to devolve upon the court. Beyond that for the court to assume management of the temple and thus go into the details would be objectionable.

Q. The court does not do that as a rule?

A. But sometimes, in Chingleput. ....

Sir T. Desikachari.—The courts do reserve power to interfere with the consent of the parties. In the internal administration of the trust the court should not interfere. But such clauses are used for the purpose of the court itself interfering even in the internal administration of the temples.

A. Yes.

Mr. Sastri.—*Q.* These suits as a rule don't go to the High Court?

A. Sometimes they go. In fact the major portion goes.

Chairman—*Q.* Would you like to say that the question relating to the alienation of trust property could be introduced in the suit unit under section 92?

A. That is the suggestion I made in order that the question of limitation may not come in and the question decided speedily.

Sir T. Desikachari.—*Q.* Would it not make the suit more cumbrous?

A. If there are a large number of alienations that would be so. In cases where there are a few alienations you can do it, on the ground of breach of trust. You are trying that in the absence of the only person who is interested.

Q. Would you think that it would make for speedy justice and would be convenient both to the parties and to the court?

A. Yes.

Mr. Justice Stuart.—*Q.* How many suits have your society on hand now?

A. More than a hundred.

Q. Would not that make a sufficiently strong case for the creation of a new court?

A. Yes, I suggested that.

Chairman.—*Q.* You say that many cases have been pending under section 92 and of that nature. Is it for the recovery of the trust property?

A. Yes.

Q. As to district munsifs, you appear to think that before they begin to try suits they should be placed under district judges or subordinate judges so that they might learn work under them. Don't you think—they are appointed at the age of 30 and after some years at the Bar—they might know the actual trial work?

A. Yes, those who have had practice.

Q. Don't you think that what is required for them is management of the business side of their duties?

A.—Also in the trial.

Q. Have you noticed that judges have been transferred after arguments have been heard, but before judgments have been delivered and that cases have to be tried over again by the men appointed in their place ?

A. In two or three instances.

Mr Justice Stuart.—Q. But in that case why does not the judge himself deliver the judgment ?

A. He has got enough work when he goes to the new court.

Q. In my province if a man leaves a place after he has heard arguments he has to deliver the judgment.

A. Here when the matter is brought to the notice of the High Court, the judge is retained for that purpose.

Q. But he can write the judgment anywhere because he has completed the case ?

A. Sometimes the judges are consulted before they are transferred and so the High Court can know that there are cases in which arguments have been heard but judgments have not been delivered.

Q. Do you mean to say that the district judge does not know that one of his subordinates has heard arguments in a case but has not delivered the judgment ?

A. But munsifs here are transferred after every three years.

Q. Does not the district judge look into their work at that time ?

A. When the judge comes to know that the munsif has heard arguments in a case but has not delivered the judgment then the transfer is cancelled.

Dr. DeSouza.—Q. Does not the munsif or the subordinate judge himself report to the district judge that there are several cases in which he has heard arguments, but has not delivered judgments and therefore ask for postponement of the transfer ? Does not that happen as a matter of course ?

A. But that will not be to his credit. It may be said that he is against his transfer.

Chairman.—Q. Apart from that, I would like to ask you a question about some special subject. You consider that representative suits should not be extended more than is necessary ?

A. Yes.

Q. And you think that all members of a Mitakshara family other than sons of the party defendant should be made parties ; in other words you do not think that representation principle should be applied beyond this that you might treat the father as *Karta* representing his own son unless there was an adverse interest ?

A. Yes.

Q. Will you just tell me in connection with section 92 suits, who are the defendants ? As a rule are they simply trustees ?

A. Yes.

Q. You do not get a question of representation orders involved in that ?

A. Except in the case of the plaintiff.

Mr Justice Stuart.—Q. Are these suits almost entirely suits to remove trustees ?

A. Yes.

Q. Why should they take such an excessive time ?

A Because they have to be tried along with other suits.

Q. Do these suits always present difficulties ?

A. Some cases do.

Q. I think they are usually cases of misconduct ?

A. Yes.

Q. I can not understand it. I have tried many suits of this nature and I do not know any case which presented any great difficulty. The question of misconduct is usually a very clear one and easy to decide.

A. Yes.

Chairman.—*Q.* Do plaintiffs in these cases want time in order to collect funds for proceeding with the suit ? So far as the institution fee is concerned I do not think any difficulty arises.

A. Yes.

Mr. Justice Stuart.—*Q.* Why do you want large funds in a suit of that sort—after all these are questions of misconduct which are usually reprobated by the people who worship in the temple ? Those are the people who are dissatisfied with the management.

A. Yes.

Mr. Rao.—*Q.* Supposing the new bill is passed as an Act, will that in any way help you ?

A. Section 92 is repealed as regards Hindu Public Religious Trust.

Q. What is the procedure there ?

A. The Board takes the initiative.

Q. Do they adjudicate ?

A. Yes.

Q. Are their orders final ?

A. The matter may be agitated again in the civil court.

Q. If the bill is passed, the present position will change ?

A Yes.

Chairman.—*Q.* About the practice in the High Court, you lay stress on the point that there is too much translating and printing. I understand, when appeals are of the value of Rs. 10,000, the printing is in the Privy Council form and you say that unless the parties are proposing to go by the Privy Council form, it is unreasonably costly to require them to print in that way. The difference between the Privy Council form and the ordinary method of printing is apparently considerable ?

A. Yes.

Q. You say that bills for the Privy Council generally amount to Rs. 4,000 or 5,000 and not less than Rs. 1,000 in any case ?

A. Yes.

Q. The Privy Council has passed rules quite recently and it will be absolutely early to suggest such a change in it ?

A. Yes. As a matter of fact printing in the Privy Council form takes a very long time and if you have got delay in the High Court, you have got it in printing only.

Q. The delay is not mostly due to printing in the Privy Council form, but it is costly no doubt ?

A. Yes.

Q. You suggest that the practice of originating summons may be started in specific matters. Do you suggest that as regards the Original Side of the High Court or as regards all courts ?

A. As regards all courts. It will tend to speedy disposal.

Sir T. Desikachari.—The matter is one apparently suggested in connection with the suits about alienations by owners of limited estates—for instance by a widow—and in order to prevent these alienations being questioned sometimes 50 or 60 years afterwards you suggest some sort of originating sommons.

A Yes, with reference to the alienation by a widow, to get the permission of the court upon a particular fact stated.

Q. Before the alienations are effected ?

A. Yes.

Q. The result of that would be that every alienation by a widow will be brought before a court ?

A. No body will be obliged to come before the court.

Q. But will not every person be inclined to go to the court and apply for originating summons and that will be an undesirable consequence ?

A. Yes.

Q. The result of that would be an enormous increase in the number of cases ?

A. I don't know.

Chairman.—*Q.* Is not your suggestion based on the fact that some body here introduced a Bill on the subject ? That is of course a matter for legislation.

A. I am leaving out the disputed questions.

Q. Your suggestion to introduce originated summons in your memorandum and that bill has nothing to do with that question ?

A. No.

Mr. RANGANAYAKALU NAIDU, Representative of the Indian Officers' Association, Madras.

WRITTEN STATEMENT.

1.—A (ii) Original suits based on title may require one year for disposal. Money suits may be disposed of in 6 months. Regular appeals do not take more than 6 months, except in special cases. Civil miscellaneous appeals against orders may be disposed of in 3 months, and small causes also in the same period.

(iii) Original Suits in the district munsifs' courts may also take a year, and money suits or rent suits 6 months. The other suits, according to their nature, take 3 to 6 months, and the small causes also may ordinarily be disposed of in 3 months, if contested. (Much of the delay in disposal of suits is occasioned by the difficulty of service of suit notices upon defendants, and some effective means of speedy service may tend to reduce the pendency of suits.)

B (i) The claim proceedings in district courts, subordinate courts and the district munsifs' courts may well be disposed of in 2 months.

2.—Disposal of original suits involving title now generally exceeds the reasonable limits prescribed above. The main causes for the delay are numerous which can only be barely referred to, as a discussion of the causes may be out of place here.

1. Want of sufficient number of courts ;

2. Difficulty of effecting service on defendants, because of wilful evasion and because of want of co-operation on the part of village officers ;

3. Reluctance of the witnesses to attend courts because of their personal inconvenience, and consequent evasion of service of summonses ;

4. The natural tendency of parties to be dilatory and of the propensity of the defendants, with weak defences, to postpone the evil day of judgment ;

5. The prevalence of toutism, referred to also in the report of the recent Bar Committee there being no effective legal provision to check it for want of proper facilities to book the touts;

6. Absence of the members of the Bar engaged elsewhere and their unpreparedness for want of sufficient time, because of the acceptance of engagements beyond their power to cope with ;

7. The difficulty of securing the attendance of village officers who happen to be witnesses in most cases and whose presence is generally required for revenue purposes.

3.—Most of the time is now taken up by judges for recording depositions. Some convenient system of having the depositions recorded in short-hand and read over to the witnesses after transcription, will save considerable time and reduce the period of pendency of suits.

4.—District munsifs :—Their selection at present is generally good, but special attention should be paid to the extent and nature of the practice they have in the profession before appointment, as the training they get depends upon the extent of their practice.

Subordinate judges :—Promotion from district munsifs, having regard to their efficiency.

District judges :—Promotion from subordinate judges of proved competency.

High-Court judges :—Promotion from distinguished district judges, with considerable mofussil experience, which is indispensable.

The rules require no alteration as it is the method of selection that makes for efficiency. Appointment of men of the provincial service as district judges and High Court Judges would tend to speed up disposal.

5.—No special training would be necessary for district munsifs before appointment, if the selection is made with strict regard to the extent of their practice at the Bar. In the case of candidates drawn from ministerial officers, some preliminary training is necessary.

6.—Disposal is not affected by the present method of transfers.

7.—It is not possible or desirable to fix a correct general standard, which varies with each court. An average of disposals for 10 years for each court may be fixed as the standard.

8.—Concentration of many civil courts in one place of the same grade does hamper the work of the judicial officers as it is always the prominent members of the Bar that are engaged in all courts, and their presence cannot always be secured whenever necessary.

9.—No change is needed.

10.—No more enhancement of the jurisdiction is desirable than at present in original suits.

12.—Yes.

(*a*) 1. Petitions under the Guardian and Wards Act over the taluks over which he has original jurisdiction ;

2. Probate and Administration ;

3. Issue of succession certificates.

(*b*) The local head-quarters subordinate judge or in his absence the district munsif may be a personal assistant to the district judge in the matter of administration and some branches of work deputed to him, as it is now practically sheristadar of the district court that does much of the administrative work.

13.—The subordinate judges may be invested with jurisdiction of the nature referred to. No special selection of officers is necessary.

14.—Exclusive jurisdiction is not desirable. The work done by the village courts and panchayats is not satisfactory in contested matters. People have no confidence in them.

15.—No. Execution of decrees in simple mortgage suits involves change of title in immovable property and as there is no right of appeal in small causes, the suggested extension is undesirable. Articles Nos. 8, 34, 36, 38, 39, 40 to 43 need not be excepted.

16.—(*a*) Not desirable.

17.—Uncontested suits of small cause nature involve no appreciable time in trial. Sub-registrars should not be invested with small cause jurisdiction.

18.—Yes, in some cases. Second appeals involving right to immovable property worth Rs. 500 or less need not be allowed when the decision of the original court is confirmed by the first appellate court. There need be no appeals against orders of attachment before judgment and against interim orders under Orders 38 and 39, C. P. C.

20.—In suits for Rs. 1,000 and less no second appeal need be admitted unless the first appellate court certifies that there is a question of law involved.

21.—No. This would be a great hardship.

22.—No. The provision is not desirable in suits of the value of more than Rs. 500. Preliminary hearing may be insisted upon in money suits of the value of Rs. 500 and less.

23. (2)—No revision petition should be permitted if the interlocutory orders could be attacked in appeal.

24.—The procedure prescribed in Orders 10, 11 and 12 C. P. C. may be enforced more strictly to make the issues less complicated and the trial short. Lists of witnesses in original suits should be filed for the first hearing. Those not mentioned should not be examined except by leave of the court.

25.—Service through registered post may be more largely employed. Affixture of notice or summons when made to the house in which the party permanently resides should be considered sufficient even in the first instance, when it has been duly certified by a competent officer, on oath, that it has been duly affixed.

26.—The forms given in Civil Procedure Code are generally adhered to.

27.—No. Not much.

28.—No. The village munsif cannot be trusted with service as he is not above suspicion in several cases.

29.—This is being done now, but after the decree engagements of pleaders do not continue in many cases. If they do continue the service may be considered sufficient, if only the pleader is given enough time to communicate with his client.

30.—This is being usually done now. The system is desirable.

31.—The issues are generally framed by the courts themselves. This may be insisted upon and the courts should, in some cases, insist upon the presence of the parties or their competent agents to clarify the issues.

32.—Neglected as a rule but enforcability is desirable. The absence of the parties, sometimes wilful, and the consequent loss of time seems to be the reason.

33.—This seems to be highly desirable in most cases when the matters in dispute are within the direct knowledge of the parties. Examination of parties before examination of witnesses may shorten the trial.

34.—This is not being strictly enforced. The system of paying batta to the witnesses in advance for the next hearing may secure their attendance more effectually.

35.—Sometimes it is. It is difficult for the court to control the number.

36.—In uncontested proceedings this is now done in some courts. Even here affidavits are defective and oral examination is found necessary. In contested cases, affidavits are of no practical benefit as the deponents have to be cross examined. Payment of special costs may be insisted upon.

37. No. It is highly undesirable.

38.—It is not desirable to extend the application of Order 37.

39.—(*a*) In the case of Mitakshara families the parties may be directed to state whether their appearance was in a representative capacity or not.

40.—No. It is not easy to ascertain whether the legal representative was or was not aware of the proceedings, and this preliminary enquiry itself may involve much time. The plaintiffs or petitioners who start the proceedings are the best persons to seek them out and bring them on record.

41.—Sometimes there has been some delay. The proposal to have a list of all possible guardians is not workable. The court guardians are being appointed when incessant refusals are met with.

42.—Only interim orders are passed *ex parte*, and they do not stand long unless confirmed. No undue advantage is permitted to be taken.

43.—This depends upon the personality of the officers. Nothing can be suggested to remedy the evil, if any. Length of judgments do not interfere with speedy despatch of business.

44.—They are usually disposed of when the question of law is clear and admits of no doubt.

45.—Yes. Judges themselves fix the dates of hearing. This may be insisted upon in cases of officers who do otherwise.

46.—They are sometimes formally asked and in most cases they do not seem to know more than the judges, and they are often far below the mark in their estimate.

47.—No. The commissions are returnable on a fixed day and such returns are insisted upon when extensions are not granted for good reasons. Written interrogatories need be sent only when open examination is not desired.

48.—Adjournment applications, with affidavits, are taken in cases in which their necessity is felt by the judges. Day costs allowed for adjournments sometimes do prevent frivolous applications.

49.—If all the witnesses are present, they are taken up generally from day to day, though the entire day could not be devoted to a single suit as the number of parties in other suits or proceedings, requiring short attention, would be much inconvenienced.

50.—Yes.

51.—No inconvenience is now felt under the present procedure.

53.—May be extended.

54.—This is highly desirable.

55.—This may be done without any inconvenience.

56.—(*a*) 6 years would be sufficient for money claims and 12 years for immovable property.

(*b*) This is unnecessary as mere infructuous applications only swell the record and the decree-holders know when to get at the judgment-debtor. One year would be too short.

(*c*) The date of the last order on the last application may well be made the starting point. The removal of the 3 years limit for applications may tend to make the parties more dilatory in their habits and promptness in execution may not be secured unless some limit is placed.

57.—This is desirable and may prevent frivolous applications.

58.—The parties living in remote places may find this restriction hard. In most cases transactions are carried on with confidence and it is only a few of them that come to the court.

59.—It may be desirable and also necessary in urgent cases, to permit execution on the strength of an affidavit pending service of notice, the collections, if any, being deposited in the court. Rule 16 of Order 21 may accordingly be modified.

60.—The discretion may be exercised by the court without any inconvenience.

61.—(*a* and *b*). A single notice may refer to all the substantial reliefs asked for. Rule 22 may be so amended as to include the notice of all substantial reliefs. In cases requiring attachment of property, sale notices should be sent after attachment.

62.—Such a general rule would work hardship. Courts exercise their discretion now, and have the power to do so.

63.—Too many notices are now being unnecessarily sent and a mention in one notice of all the substantial reliefs asked for would be quite enough.

64.—Sale notices and proclamation notices may be issued together, but they cannot be issued unless the attachment had been effected, as a clear description of the property attached and to be sold should appear therein. If the pleader's engagement continues, such refusal of notice by the pleader may be considered as

refusal by the party. Otherwise notices must be served on the judgment-debtors directly.

65.—No. The village officers cannot be depended upon for honest execution of warrants.

66.—(*a*) If parties are compelled to produce such a certificate they would be put to unnecessary expenditure and much time will be lost;

(*b*) If compelled to add them all as parties, the suits would become much complicated. Dismissal for non-joinder may not be desirable as the parties take the consequence of non-joinder otherwise;

(*c*) If they are made parties to the suit their right should be finally determined independent of the plaintiff's desire;

(*d*) If all mortgagees are on the record such procedure is desirable;

(*e*) No. Sometime would be necessary for payment after the result of the suit is known. In simple mortgage suits, no final decree need be formally passed; a conditional personal decree may be given for enforcement, after exhaustion of security, as was being done till some years ago.

67.—No such delay is now being caused. Claim for exemplary compensation would tempt the parties to give rise to unnecessary and protracted enquiries. No provision for compensation need be made. The courts have full discretion to stay the proceedings or not.

68.—It may be desirable to take security, if money cannot be deposited, as unscrupulous persons are often satisfied by mere postponement by some means or other.

69.—The law of insolvency does hamper the decree-holder as it gives the dishonest judgment-debtor time for fraudulent transactions. The proceedings before the official receiver are not as prompt as is desirable. Exclusive jurisdiction devolving upon the district courts has not appreciably hastened the proceedings. The court having jurisdiction in the matter of insolvency petitions may have the power of the kind the district courts are invested with.

70.—The provision for arrest and attachment before judgment does prevent delays in some cases.

71 and 72.—There is no necessity to change the provision of law requiring an attesting witness being called to prove a mortgage-deed. It is not desirable to throw the burden of proving the invalidity of the document upon the executant before formal proof of its genuineness is adduced, as admission of execution before sub-registrars is not sufficient judicially.

73.—If both the parties consent there is no harm in admitting secondary evidence of any form. There is no difficulty in obtaining the certified copies of the documents and much time is not involved in obtaining them, if only the parties are diligent.

74.—The period of limitation in suits against the Government may well be reduced to 30 years and in suits on mortgages with possession to 12 years.

76.—It seems to be necessary that a registered document should be insisted upon to evidence partition of immovable property.

77.—Partnership transactions involving a capital of five hundred rupees and more may be compelled to be evidenced by registered documents. The fee for registration must be reduced to induce free registration.

78.—There is no harm in permitting the equitable principle of estoppel to operate against the provisions of the Transfer of Property Act in cases of part performance, as courts are of both law and equity and the principles of equity may, in exceptional cases, be permitted to modify the provisions of codified law. But in several cases the pleas of part performance would open a wide door to perjury.

79.—This may involve hardship in the matter of transactions involving small amounts.

80.—This involves great hardship in the case of persons residing in remote villages. Thumb impressions may well be insisted upon.

81.—If courts can refuse to recognise *benami* transactions, after due notice to the people of the change in the law, such pleas may well be disallowed.

82.—Varying rates of court-fees cannot be introduced and there is practical difficulty in the collection of the court-fees at the time of institution of suits, the frivolous nature of which can only be known after trial. The imposition of additional costs by way of penalty may serve to check the institution of such suits.

83.—There is difference between mortgage-deeds, sale-deeds and lease-deeds. The present provision in the case of mortgage-deeds is necessary. In sales and leases also, there are attestations invariably. No change is necessary.

84.—The introduction of law of champerty and maintenance, as obtaining in England, may well be introduced now into India.

85.—No necessity for referees is now felt in the mofussil.

86.—If only authorised reports are permitted to be cited, much time can be saved.

87.—Yes. To a certain extent it may tend to speedy justice. Hindu Law and the law of torts may well be codified.

Mr. RANGANAYAKULU NAIDU called and examined on Monday, the 11th August 1924.

Mr. Justice Stuart—Q. I have not been able to find a single instance of an appeal being decided on the day it was fixed for its first hearing. Is that your experience ?

A. Yes, it is never done.

Q. What is the reason ?

A. On the first day pleaders are not sometimes ready and we feel no difficulty in adjourning them. In original suits there is the difficulty of witnesses coming again and again, but in the case of appeals we have only to deal with the pleaders and therefore neither they nor we feel any difficulty in adjourning them. We usually do these appeals according to our convenience and whenever we find time available.

Q. Don't you think that this is one of the main reasons for the delay in deciding appeals in this presidency ? Do you know that the number of pending appeals is enormous ?

A. That is not the reason.

Q. What is the reason then ?

A. The reason is that we have to pay more attention to original suits than to appeals. The capacity of a man is judged with reference to the original suits only and the appeals are not taken into any account.

Q. Then the reason for the delay in the disposal of the appeals is that the promotion of subordinate judges depends on the disposal of original suits and that the appeals have nothing to do with their promotion ?

A. No, this is not exactly the case.

Dr. DeSouza—Q. Is it not sometimes the case that pleaders ask for an adjournment in these appeals because their clients have not instructed them fully ?

A. Yes, that is the case, but sometimes they openly say that they have not been properly paid by their clients and therefore they ask for an adjournment. When we feel no inconvenience we are obliged to comply with their request.

Q. Are there many such cases ?

A. No.

Mr. Rao—Q. What is the time allowed for the disposal of an appeal ?

A. Six months.

Q. Do you keep them over and above six months ?

A. Sometimes we do.

Q. How many part-heard suits are now pending in your court ?

A. My court was only established on the 1st August 1924 and in view of the notification I took special care and disposed them of.

Q. Generally there are five to seven part-heard suits pending in every court ?

A. Yes, rather 12 or 13.

Q. Are there any courts in which there are no part-heard suits ?

A. I don't think so.

Sir T. Desikachari—Q. In munsifs' courts you have probably more part-heard suits.

A. Yes.

Mr. Radhakrishnaiya—Q. With regard to recruitment you say that you would like to have on the High Court bench some people who have been district judges with considerable mofussil experience. I think, according to the present rules judges who have been judges in the Madras small cause court are not considered as belonging to the provincial civil service ?

A. Perhaps not.

Q. Suppose a person recruited direct from the Bar is sent to the Madras small cause court. Will he not be considered to be a member of the provincial civil service.

A. He is not.

Q. If afterwards he is appointed a district judge and from that place he is appointed a High Court judge would you consider him to satisfy the requirements of your service and do you say that such a person does not represent the provincial civil service.

A. No, he cannot represent the provincial civil service. We have no grievance about the members of the Bar being recruited direct into the provincial civil service but we have also a right to rise according to our qualifications.

Mr. Rao—Q. What you mean is that you want to have a chance for yourself. I see no harm in that at all.

A. Not about that. District munsifs do come direct from the Bar.

Sir T. Desikachari—Q. I wish to ask you about question 14. You say that exclusive jurisdiction is not desirable so far as the village panchayat courts are concerned. Have you experience of the village panchayat courts ?

A. I had experience of village courts as a district munsif.

Q. In what districts ?

A. In the Guntur district and the Godavari district.

Q. You say that these panchayat courts are not popular ; but is it a fact that they are increasing in popularity ? I put you this question because I have got figures before me for each district.

A. I have no experience of panchayat courts, but I had experience of old village courts.

Q. Then how do you apply your remarks to panchayat courts ?

A. That is not from experience, but from what I heard.

Q. Surely we do not judge from what we hear ?

A. If you want to know the public opinion, we determine only from what people think about it.

Q. For instance in Godavari there are 268 village munsifs' courts and 48 panchayat courts, and they have disposed of six thousand suits.

A. Perhaps had they been popular, there would have been a larger number.

Mr. Sastri—Q. From what source is your opinion gathered, is it from members of the Bar ?

A. From the club talk.

Q. That is confined to members of the Bar ?

A. There are merchants also.

Q. Have you had conversation with persons who actually had litigation ?

A. My memory is not quite correct, but, at any rate, there was conversation about these matters.

Q. Persons who had actually come into contact with the panchayat—have you had conversation with them ?

A. Must be.

Sir T. Desikachari—Q. I am putting you these questions because you are representing the Officers Association.

A. But so far as I am concerned I have no experience.

Q. This statement is not made on the actual statistics ?

A. That is what I believe. There are other gentlemen also who drafted this memorandum, and they are also of the same opinion.

Dr. DeSouza—Q. Do you think that there is a certain amount of complaint that munsifs and subordinate judges do not pay sufficient attention to execution work. Several witnesses who were examined before the Committee, suggested that this is due to the fact that execution work is not shown in the statistics and in consequence the munsifs neglect it, and a good deal of it is done by the execution clerk. What justification is there for this belief ?

A. There is absolutely no justification, because execution is a work which does not very much tire the judge.

Mr Sastri—Q. But it annoys him ?

A. No. He can dispose of 100 or 120 applications in half an hour.

Dr. DeSouza—Q. Is it your experience that execution work is always up to date in the munsif's court ?

A. I think so. If there is any defect it is only in the nazarat.

Q. Is there any truth in the allegation that the execution clerk returns execution petitions for frivolous pretexts ?

A. It all depends upon the presiding officers. If the presiding officer takes care to see that frivolous objections are not raised by the clerk, there will be no complaint. When an execution petition is filed for the arrest of the judgment-debtor or the attachment of the property, the clerk puts up a short note that petitioner wants arrest of the judgment-debtor and we say "J. D. to be arrested attachment ordered."

Q. We have had witnesses before us who told us that it was impossible to have anything executed without some sort of malpractice on the part of the execution clerk ?

A. That is perhaps an exaggerated statement, but we have reasons to think that there is some corruption with regard to these execution petitions, and so far as I am concerned I try to supervise these matters.

Q. But can you suggest any method by which more efficient supervision can be exercised, and the malpractice which amounts to a scandal be stopped ?

A. I have myself adopted one method. I always tell the members of the Bar to make a complaint to me, but it is only in extreme matters that these things are brought to my notice. It is the vakil's clerks who generally come and bribe the execution clerk. I used to ask the members of the Bar that if there was any genuine complaint, it should be brought to my notice, and in one or two cases pleaders did bring it to my notice and I had to suspend a man.

Q. What was the nature of the step; did you record any evidence ?

A. Yes. That was a case in which a *thanadar* was concerned. The amin took the warrant and said that unless he was paid ten rupees, he would not go to the spot to attach the property. The *thanadar* refused to pay and the amin made a return that there was nobody to show property, and he could not therefore attach the property. The next day the *thanadar* came to the pleader and proper complaint was made to me. I took the evidence of the *thanadar*—a respectable official and I was satisfied that there was some malpractice. I suspended the amin for 15 days.

Q. That is the only step you remember having taken ?

A. As a district munsif I had some more, but I do not remember the details. It is the most recent one. There must be some *esprit de corps* among the pleaders and they must come forward and report to the judge. It is not possible for the judge to know anything about the matter and they being members of a respectable body should also think it their duty to bring it to the notice of the judge.

Mr. Sastri—Q. As regards execution petitions you have a large number of petitions filed and recorded. I find you have a proposal to have only one execution petition and keeping it alive for a full period of 12 years ?

A. Yes. Then the decree-holder might take steps any time.

Mr. Radhakrishnaiya—Q. In answer to question 58 you say that altering Order 21, rules 1 and 2 in such a manner as to restrict pleas of payment out of court to payments through post office, or a registered bank or the vakil of the party to whom the payment is made or in the presence of a sub-registrar would be hard and that in many cases decrees are satisfied out of court, and the court need not ask for record for payments made out of court.

A. Yes, payments are made out of court and they take an acknowledgment on the decree sometimes. But often times they do not do so. The judgment-debtor keeps the decree copy and no more of that is heard afterwards. Out of confidence they don't want even an acknowledgment of the decree.

Q. With regard to persons who cannot sign their names, you say it will be a hardship to the people in the villages. In the case of people who cannot sign their names why should not their thumb impressions be insisted upon ? That is being done now ?

A. Yes. Insisting too much upon registration is likely to impede considerably trade and commercial transactions as well as lending and borrowing transactions. There must be facility for these.

Mr. J. W. HUGHES, District Judge, Chingleput.

Written Statement.

I have had very little time to consider the questionnaire which I received only 4 days ago. I do not think any appreciable result can be arrived at in the way of speeding up the business of the courts by any practicable changes in any of the directions indicated in the questionnaire. The only remedy is to increase the number of courts and in some cases to appoint relief judges without additional courts or staff which as the Chief Justice says in his minute, "would prove an effective and inexpensive remedy."

I will now deal with some of the questions in the questionnaire. There are questions dealing with the efficiency of judicial officers as regards the amount of work done. I think a standard is objectionable. We shall always have quick judges and slow judges and it is not advisable to insist on lightning disposals from all alike. Steady, conscientious work, without dilatoriness is what is required. I do not observe any questions dealing generally with the efficiency of the Bar. As a judge I may be somewhat prejudiced, but I certainly think a great deal of the delay in all branches of judicial work is due to dilatoriness and carelessness and unbusiness-

like methods of the members of the Bar. I cannot however suggest any remedy for this. We shall always have some efficient and useful members of the Bar and some who are inefficient and waste time. It is astonishing what a lot of time is wasted by pleaders not being immediately ready when cases and petitions are called on. Each court has to educate its own Bar in this matter and no rules can be framed to improve this state of affairs.

With regard to question 10, I should be inclined to enhance the jurisdiction of district munsifs in small causes to Rs. 500, but it might be made a condition that they should be district munsifs of 3 years' standing.

12 and 13. I would invest all subordinate judges and district munsifs, whether they are at headquarters or not, with jurisdiction to try probate and succession certificate proceedings and land acquisition proceedings. This would be acceptable to the public, and would afford some relief to the district judge. I think too that work under the Guardian and Wards Act might well be given to subordinate judges and district munsifs.

18. I would not curtail the right of appeal.

22. So far as this court is concerned the power is scarcely ever exercised. The fact is that the district judge does not like to run the risk of having to hear the appellant's pleader twice over. I do not think it is necessary to correct this.

24. In the limited time at my disposal I cannot think of any suggestions by way of changing the present procedure, but I would strongly recommend that the reading out of depositions of the witnesses should be dispensed with. It is very rarely that witnesses correct mistakes, and when they try to, they generally try to add to or vary their depositions. It might be thought that the reading over of depositions is necessary in view of possible prosecutions for perjury, but such prosecutions are now to be instituted only on the complaint of the court and the courts can be trusted not to institute complaints except in absolutely clear cases.

25. The present procedure should be continued. On the whole it works well and assures effective service which is essential.

28. I would not extend the use of the post office for service of notices and summonses. I think it would lead to more difficulties: if the correctness of postal acknowledgments were disputed, it would be difficult to prove it.

30. This is generally done now and always ought to be done.

31 and 33. There is no doubt these provisions are very much neglected. The reason is that none of this work counts directly in the satistics. The courts are anxious to post the suits for final hearing and therefore do not encourage preliminary skirmishing. It is to be feared also that the members of the Bar do not prepare their cases thoroughly. They know that very often a long period will elapse between the framing of issues and the hearing, and they do not take enough interest until the case comes on finally, when they wake up.

The real remedy is to give more time to the courts and this brings us back to the forbidden subject, the necessity for more judges.

I think the adoption of the suggestion made in question 33 would in present conditions be likely to increase delay.

34. So far as district courts are concerned the answer is, No. The reason is that sessions work so often interferes with postings, and pleaders do not like to pay batta until there is a reasonable chance of the case being taken up on the day posted. I generally give a warning notice to pleaders on both sides when I think I can really take up a case for evidence.

35. I do not think so. My impression is that generally the evidence let in is insufficient. I have frequently remarked that district munsifs are called upon to make bricks without straw.

36. I think the suggestion might well be adopted so far as it concerns enquiries into claims, succession certificate proceedings and *ex parte* proceedings. This might

save some time. I would not adopt it in case of proceedings for removing obstruction to delivery of property, as such proceedings may be of a *quasi*-criminal nature.

37. This would be very dangerous. But I suppose, even now, where there is flagrant abuse, courts have inherent power to pass such order as may be necessary and it would be better to leave the matter there.

41. There is considerable delay so caused, but I do not see how it can be avoided. I do not approve of the suggestion made in this question as it might result in bringing people unnecessarily to court.

45. I scrutinize the work of posting but do not always fix dates myself, it would take too much time. I give instructions about posting particular classes of work for particular periods.

46. Pleaders are often consulted.

48. The insistence on written applications for adjournment would probably cause increased delay. The courts may be left to insist on such applications according to circumstances.

54. I do not think this is necessary, the work is best left to the original court.

60. This rule is salutary and should be retained.

61 (*a*) & (*b*). I think Order 21, Rule 22 should be retained. Clause 2 enables the court, where necessary, to dispense with the notice.

I have not got sufficient time to consider the several important questions relating to execution, *e.g.*, questions 55 to 59 and 62 to 64 and the questions relating to mortgage suits.

I am in favour of the proposals mentioned in questions 72, 73. As to question 83, I think it is unnecessary to retain the provision in the case of mortgage documents that they should be attested.

Mr. J. W. HUGHES, District Judge, Chingleput, called and examined on Monday, the 11th August, 1924.

Mr. Justice Stuart—*Q.* One thing I wish to have your views on and that is with reference to the standard of work. You are strongly against it ?

A. I am not in favour of setting up a standard for the Bench. In the first place there is a strong feeling against any such thing in the whole presidency. I am not speaking of the local conditions only.

Q. Do you not think that if such a standard were prescribed, and it were applied in an intelligent way it might be useful to theofficers themselves ?

A. I do not think so.

Q. Have you considered the fact that such a standard shows how much work was done in a particular court and thus assists, where institutions increase, in obtaining relief ?

A. I think it might be useful for that purpose. The standard should be based on an average for each locality. There is no good taking the average for the whole. It will be horribly misleading.

Sir T. Desikachari—*Q.* Indeed in each district you must fix the standard according to the local conditions. You can fix a standard for the work in each district by taking an average for 7 years or 10 years. But of course one also knows that in special circumstances it would be impossible to expect a man to work up to that standard, when there are heavy cases filed into that court ?

A. Then there will be extra assistance needed for him.

Mr. Justice Stuart—*Q.* Are extra courts in your experience sanctioned fairly easily ?

A. I think assistance is got fairly easily, provided we make out a good case with figures. I think the High Court is always ready to grant all proposals if they are supported by figures.

Q. In your experience do you find that you have proper facilities for inspecting your civil courts or that you have not ?

A. I think we do have. They do a lot of good also. We inspect them once a year and that is useful and fairly thorough. It is useful to the district court as also to the litigants.

Q. Can you find time to do this work ?

A. Yes. I have been a good many years at it and I should say that within the last 12 years or 13, I have been able to do a good deal of inspection and I certainly think the inspection is useful.

Q. In regard to civil appeals from munsifs do you transfer them as soon as they are instituted ?

A. In my district I have got only one subordinate judge and he is intended mainly for doing original work. I send him some appeals. For that purpose I select certain number of appeals.

Q. Could you not select them at the time of institution instead of at a later time ?

A. Yes, it could be done. The practice of selecting them is useful for the district court, and to get rid of arrears.

Q. But you cannot keep your own appellate work in hand. Must you not transfer a certain amount of work to the subordinate judge ?

A. Well, of course it depends upon the presiding judge to a great extent. The judge who was there before me got through the work himself very quickly. He was a genius at disposal. But some people are not quite so quick. That depends upon several circumstances.

Q. How long does the appellate work take in your court ?

A. Sometimes it takes up more than half a month.

Q. Can you not fix your dates so that sessions work and civil appellate work do not clash ?

A. We can to some extent.

Q. Is not a judge rather unlucky to find that appeals are fixed for the same day as the sessions cases ?

A. I always have some appeals because sometimes sessions cases collapse for some reason or other, and we must have some work to fall back upon.

Q. Do sessions cases often collapse ?

A. Not often.

Sir T. Desikachari—Q. Do you find any time to do original work in Chingleput ?

A. Yes, a certain amount.

Q. Are suits instituted in the district court or in subordinate judge's court ?

A. They are instituted according to jurisdiction.

Q. How many original suits are disposed of in the district court ?

A. I should think, on the average, about 20.

Q. I put you this question because in some districts the district judges get absolutely no opportunity to try original suits ?

A. Yes. In Tanjore for instance.

Mr Justice Stuart—Q. Do you find much trouble in section 92 suits which appear to be common in Madras ?

A. They are very many in Chingleput.

Q. Do they involve questions beyond the capacity of the subordinate judge ?

A. I think the judge can generally send them to the subordinate judge.

Q. Can the subordinate judge have time to take them up ?

A. I think he has plenty of work.

Q. We find that these cases take very long time to decide.

A. Yes they are very troublesome. We have a lot of cases connected with temple affairs. Suits with regard to offices take a very long time and there is great trouble in dealing with them.

Q. Why is that ?

A. Because people are very much interested in such cases.

Q. What are these cases under section 92. I think it is usually an application to remove, what we call, the Mahant for misconduct ?

A. Yes.

Q. And once he is removed then, of course, the court can frame a scheme for appointing his successor. But should that really present much difficulty ? I think the question of misconduct is usually a clear one and easy to decide ?

A. These cases give great trouble. If there is a contest then innumerable documents and witnesses are produced and sometimes these cases go on for eight days and sometimes for two or three weeks.

Mr. Rao—Q. Difficulty in drawing up decrees is so great that the matter is always given a new shape. I was myself in that station years ago and I had to try a number of temple suits. I think the same thing comes over and over again in some new form ?

A. I think ecclesiastical courts should be appointed to deal with these matters.

Q. Do you consider the situation is sufficiently serious as to justify the creation of these courts ?

A. I think so. The district munsif's file is congested on account of these suits.

Q. I take it, although these suits may be of very great interest to the parties concerned, there will be no interest to any body else ? Are outside parties interested in these matters ?

Sir T. Desikachari—Q. You cannot say that. They have a very large following who watch the proceedings very keenly and for this reason there are so many witnesses.

Mr. Justice Stuart—Q. What sort of disputes are these ?

A. These are sectarian disputes. These offices are not exactly hereditary.

Q. Are these disputes decided by the votes of the community ?

A. They produce a huge volume of documentary evidence from 1812 up to the current time—the way in which it was recognised and what was the practice, the collector did so and so and the sheristadar did so and so.

Q. Is this one of the serious difficulties in some of the districts ?

A. Yes.

Q. Is criminal work heavy in Chingleput ?

A. It is not very heavy.

Q. How long did it take you in January last ?

A. Last January it was rather heavier than usual. This month it took me about eight days—working days. It takes long time only when there is a very heavy case, *i.e.*, a murder case, otherwise it does not take long.

Q. Is your subordinate court in Chingleput very heavily in arrears ?

A. I think it is. I am waiting to see what is going to be done with regard to the bill, which the Madras Government is introducing for posting additional judges. As soon as this is done, I will make a suggestion that some body may be sent there to clear off the arrears.

Q. But Chingleput is not a very heavy district ?

A. It is a light district.

Q. You have two munsifs at headquarters and three outside.

A. Yes.

Q. Their work does not seem to be very much behind hand.

A. I don't think so.

Q. Do you think that there is a disposition amongst munsifs and subordinate judges to push heavier cases behind and take up the light ones ?

A. You may expect some of them to do so, but some are conscientious enough to dispose of heavier cases along with others.

Q. Are the present facilities of supervision sufficient to stop such a practice ?

A. I think so.

Q. I should like to have your opinion on a particular case. A man brought a suit for partition in a court and for 4½ years nothing was done in that case. In the fifth year the evidence was taken. This was not in your district. It was then hung up for 2½ years more in the district judge's court and has recently been decided by the High Court ten years after its institution. Is that sort of thing common ?

A. Was nothing done for the first 4½ years ?

Q. Nothing was done at all. The first judge to whom it went kept it for three years and then it came to another who also did nothing for one year and the third man apparently not being able to do any thing else decided it. You see it is very serious. A man, under Hindu Law, if his co-partners do not agree, has to go to court to get a partition and before this partition is ordered ten years elapse. You see how serious is this ?

A. I should think that such cases are not common but the only remedy is to have more courts and more judicial officers.

Q. Is it not common to adjourn a case from April to June because the plaintiff is not ready and then from June to September because the defendant is not ready and then from September to November because the court itself is not ready and so on ?

A. Yes.

Q. Now I want to ask another thing. It is not given in our questionnaire but you may have seen it mentioned in the reports of the proceedings of the Civil Justice Committee published in the newspapers, I refer the proposal for the formation of benches of subordinate judges. The suggestion is to appoint benches of two specially selected competent subordinate judges who would sit together for the decision of appeals from munsifs of Rs. 1,000 and less. Their decision would be final on points of law—such decisions are already final on fact—but this would be subject to two provisos. The first is that if the judges disagree there would be an appeal as of right and secondly on points of law of real importance they should be directed to state a case for the decision of the High Court. There is no doubt that the constitution of these benches would accelerate decisions of appeals to a very considerable extent and would relieve the High Court in the case of second appeals and also would enable the district judges to keep their own appellate file completely in their own hands. Now, do you think that it would be possible to find men sufficiently competent to undertake those duties and who could be trusted to be final on points of law in appeals up to Rs. 1,000 ordinarily.

A. Personally I don't like the scheme.

Q. Why ?

A. Even in small cases you may get points of law which are of much importance.

Q. Would that not be covered by their power to state a case ? You will perhaps agree with me that in cases under Rs. 1,000 it is only very occasionally that you meet such important points.

A. I think they will not state a case.

Q. Why ?

A. On account of extra trouble.

Q. There is very little trouble in stating a case.

A. They might think that the High Court would be worried with this.

Q. You think this would be the tendency ?

A. I think so.

Q. If they refrain from stating a case they should be removed. I don't mean removal from the service but removal from these special benches.

Mr. Sastri—Q. Has the district judge means of knowing whether the munsifs in the outlying courts attend court punctually, *i.e.*, at 11 O'clock according to the orders of the High Court ? Has he any means of knowing this ?

A. He can find out quite easily.

Q. No, for the first time he attends his court at 1-30 p.m.

Mr. Justice Stuart—Q. Is there any method, you can suggest, in which one can shorten the labour of courts in recording evidence, at the same time leaving sufficient materials to judge the way in which a suit is tried. Do you not think that the notes are too long ?

A. I should like to have a complete record, and I would suggest that the reading of depositions should be dispensed with.

Q. That as a matter of fact is not done by the munsifs. I thought that it was usually done by the reader.

A. As far as the reading is concerned it is always done by the interpreter.

Q. But while he is reading you are doing nothing else ?

A. I am attending to it.

Q. That procedure is correct.

A. Yes. But I think the reading of depositions is a waste of time. Some depositions are very long and sometimes it takes three hours to read.

Sir T. Desikachari—Q. But that is some sort of check upon the person recording the evidence ?

A. I record the depositions myself.

Q. It must be read out to the witness.

A. You may rely upon its being recorded with sufficient correctness.

Q. You think that in that respect the rules might be amended ?

A. I think so.

Q. Would it not place the subordinate judges and the district munsifs in a very delicate situation ? Would not people say that they have not taken down the evidence properly ?

A. I think they can do that even now.

Q. Is it because neither the vakil nor anybody else attends when the evidence is read out to the witness ?

A. Yes.

Dr. DeSouza—Q. Who translates the English record ?

A. In the district court the translator does it.

Q. I think all this takes time. The translator has to translate it first and then to read it out to the witness ?

A. He interprets directly what is taken.

Q. A suggestion has been made that perhaps it would be better if the deposition is recorded in the vernacular in which it is given by the vernacular clerk, the judge taking down only short notes of it in English. Would not that save time and would not that be a more reliable record in most cases ?

A. I do not think so. If I have to decide a case I would like to take the notes myself.

Q. You will have short notes. Would it not give you some time to weigh the evidence and watch the witness ?

A. That is not my experience. I find that one does not save time if he has to dictate the whole thing.

Sir T. Desikachari—Q. There is one thing more. You are in favour of the jurisdiction of the district munsifs, on the small cause side being increased to five hundred rupees. That will have the effect of a large number of petty suits being disposed of without any appeal. Do you think that district munsifs are competent to have small cause court power up to five hundred rupees ?

A. They should be at least of three years' standing.

Dr. DeSouza—Q. I would like to ask a few questions with regard to the method of recruitment of district judges from the civilian officers. Is there any care taken to see that they have any knowledge in trying original suits before they are appointed as district judges ?

A. That is rather a question which has to be put to the Government.

Q. What is the practice ?

A. I cannot say. Government appoints district judges.

Q. Do they try any original suits before they are made to act as district judges ?

A. I do not think so.

Q. A man is taken from the revenue department as a collector and he is appointed straight as a district judge. He has no experience in the trial of original suits before he is appointed to be a district judge.

A. He has no experience personally, but he may have other experience as to how suits are tried. Before I came to this country I had to attend civil courts for a couple of years.

Q. That was before the new rules came in. Under the old rules he had to attend civil courts and make notes and submit them to the Civil Service Commissioners. But this has been done away with.

(*Mr. Justice Stuart*—I think it is being restored.)

And also, under the old rules, the probationer had to pass an examination in civil law, in Indian Contract Act, Civil Procedure Code, Law of Evidence and Law of Limitation. That too, I believe, has been done away with, and I think that none of the departmental examinations in Madras prescribe any test in civil law ?

A. I have forgotten it. I think I had to pass in the Evidence Act.

Q. What it comes to is this, that now civilians are appointed as district judges in this presidency, without having any knowledge of civil law ?

A. He may have knowledge of civil law.

Q. No knowledge of civil law so far as compulsory examination is concerned ?

A. I do not know.

Q. That I believe is a fact. That being so, if a civilian is appointed as a district judge will he be in a position to make thorough inspection of subordinate courts from the point of view of the manner in which the subordinate judges and district munsifs do their work, in preliminary stages—whether they try suits *de die in diem*, whether the issues are properly framed, or whether sections of the Code regarding discovery, inspection, etc., are properly used ? Will a district judge so appointed be in a position to do so ?

A. I do not see why he should not be able to do so.

Q. If he has no knowledge of the Civil Procedure Code himself ?

A. He has.

Q. But it is very little ?

A. Cannot say.

Q. I asked you that question because it has been suggested to us that it would be better to have the inspection of district munsifs, and subordinate judges' courts, so far as this aspect of the work is concerned, conducted by an independent officer over a group of districts. He will be an expert in this kind of inspection, and he

would be a better inspecting officer than a district judge who may be new to this work. What do you think about that ?

A. I cannot say.

Sir T. Desikachari—Q. Continuing Dr. DeSouza's question perhaps it is unfair to a civilian who has been for 15 or 20 years doing only administrative work to be made to decide an appeal against the decision of experienced subordinate judges. Isn't it unfair to the subordinate judge and even to the civilian himself ? Would a new civilian who was doing only revenue and other official work be in a position to handle a heavy civil appeal ?

A. I have been in that position myself. The question is rather delicate perhaps.

Q. It is neither fair to the civilian nor to the public that a person who has absolutely no civil experience and training whatsoever should be at once asked to do such work ?

A. Well, it is a matter of opinion. The question is how the scheme is worked in practice.

Chairman,—Q. Have you any practical suggestions that you would like to put before us of your own motion, any particular points that you would like to direct or attention to.

A. I don't think I have any except the suggestion that depositions should not be read over to witnesses.

Q. Your opinion is that it takes much time and the result of this is not commensurate with the time spent ?

A. Yes.

Mr. S. JAGANNATHA ROW, M. A., Bar.-at-Law, Chairman, Municipal Council, Masulipatam. (Representative of Panchayat Courts in the Kistna District).

Written Statement.

14. From my experience of the panchayat courts I must say the litigants are not much in favour of instituting suits in those courts. The reasons for this attitude on their part are enumerated hereunder :—

(1) The presence of such courts only in a few places.

(2) The reliance of the litigants on a middle man whose interest it is to drag him (litigant) to outside stations to enhance his (middleman's) importance and to profit himself considerably thereby.

(3) Want of faith in his neighbours arising from lack of education.

(4) The feeling of self-importance on the part of the panchayatdars due to over consciousness of their position.

(5) Litigants desire to find redress at far away places in conformity with the proverb that distance lends enchantment to the view.

From these considerations the panchayat courts are seldom called on to decide cases that lie within their competence and the few cases that come for decision to these courts are attempted to be withdrawn by the opposite side to the district munsif's court, with the result that even if a case is chanced to be tried to the end by the punchayat court, the revision courts have begun to view the result with suspicion.

There can be no gainsaying the fact that many poor ryots find themselves involved in unnecessarily prolonging litigation for petty reliefs in far off lands, so that by the time the successful party realises the relief he sues for he finds himself in no better position than when he started it. Another consequence of trying petty

suits at distant places has been the growing disregard for truth and fearlessness to utter falsehood. Why I say so is because a witness thinks he can lie before a stranger without any compunction of heart for petty things and he will certainly never dare to tell a barefaced lie on solemn oath before his neighbours. Being suspicious of their own courts and of their own men through lack of education they are driven to rely mainly on unscrupulous touts who lead them to urban places. This reliance on others for insignificant reliefs has been undermining the character of the people in one of its main aspects namely self-determination. To prevent these baneful occurrences which affect injuriously the healthy growth of the nation it becomes necessary to have panchayat courts in almost all the villages with, of course, certain salutary restrictions with exclusive rights over petty suits. While advocating the establishment of panchayat courts in almost all the villages worth the name, I am for providing certain safeguards against party-ridden villages. Personally I am not for having a panchayat court in any village unless the division officer and the taluq board president concerned jointly certify that the village is free from factions, and the moment they report the formation of any factions after a panchayat court has been established the said court should at once be abolished and its jurisdiction transferred to the nearest approved panchayat court.

Jurisdiction.—All suits up to the value of Rs. 200 may be allowed to be tried by these courts. I include also possession suits covering not more than 20 cents and also suits of the nature of easements. Though no doubt it is a pretty big step to take to authorise them to try suits of above description, I think persons on the spot are the best judges to demarcate and decide enjoyment and user. To start with I would give free latitude to the parties concerned to have the suits filed in or transferred to the district munsif's court without drawing any adverse inferences from such conduct. Of course in due course of time these suits also should come under the exclusive jurisdiction of the panchayat courts.

Constitution.—Having regard to prejudices, want of self-determination and lack of education prevailing in rural areas this question is very difficult to decide. However I should think that the needed personnel can be secured through the joint efforts of the divisional officer and the taluq board president. Though ultimately when education is made compulsory and educational traditions are created the panchayatdars may be elected by all the adult members of the village, till that stage of civic knowledge comes upon the village the punchayatdars ought to be nominated in proportion to the importance, wealth and population of the village. All areas of the population of three hundred including their hamlets I treat as villages fit to be provided with a panchayat court. I would also provide due representation among ponchayatdars for the inhabitants of the hamlets and other depressed classes.

Village Courts.—I would give exclusive jurisdiction to these courts of cases of the nature of small causes up to Rs. 50 and provide for an appeal to the defeated party to the panchayat Court itself whose finding should be final, and for all decisions arrived at unanimously by the panchayat Court either when they sit on the original side or in appeal against the findings of the village Court, there should be no appeal at all. But I will provide for revision to the subordinate judge's court or district court, where there is division and a note of dissent recorded by the members in the minority.

1 (*a*). (*2*) Title suits—one year, Money suits—four months, Regular appeals—six months, Miscellaneous appeals—three months, Small causes—three months.

(*3*) (*a*) Title suits—nine months, Money suits—four months, Rent suits—six months, Small causes—three months.

(*b*) District Courts—six months, Other courts—four months.

2. Yes. Considerably longer than they ought to. The main causes for these delays are (*a*) The prevailing notion amongst people that civil suits are not generally expected to be got ready at an early date as the trial would commence only an year or two after their institution.

(*b*) The inability to find sufficient time by these courts having to waste a lot of their time in attending to miscellaneous and *ex parte* work.

(*c*) The failure to take coercive steps when witnesses do not attend the court after being served and the failure on the part of the court to automatically bind over the witnesses present without giving an option for the parties to summon them again.

(*d*) The unwillingness of practitioners to examine witnesses present as the courts are ordinarily against having a number of part-heard cases.

(*e*) The inordinate delays caused in serving the parties, because of (1) the doubtful sincerity of the process-servers in affecting service. (2) The desire on the part of the parties to avoid service to prolong litigation in their ignorance of the value of time. (3) Also here and there the courts' failure to apply the provisions of substituted service early enough.

3. Trial Courts should be relief of all miscellaneous and *ex parte* work. In all the centres where there are district courts or subordinate courts, there ought to be deputy munsif's court to do the miscellaneous and *ex parte* work for all the courts of the place. He shall have power to decree suits *ex parte* and decide contested cases up to the stage of framing issues, when he shall transfer the cases to the file of the concerned court. In no case he shall have power to pass any orders on interlocutory applications, and if any such application is made before the issues are framed he should submit the record to the trial court. Thereafter the trial court should proceed with the case in whatever stage it be. Where there is only a single district munsif's court or another additional Court, the head clerk of the principal court who will be specially appointed shall have all the powers of the deputy munsifs in that area. With regard to the delays occasioned through the doubtful integrity of the process-server and lack of frankness of the litigants, there seems to be no hope till the general moral tone of these persons is improved. Any amount of precaution taken to ensure speedy service is bound to end in complications and even occasion miscarriage of justice. However, I would suggest that the village officers be always directed to attest the summons where the service is not personally effected. I feel this is not a very effective method, and in my opinion the only hope lies in educating all people by making it compulsory.

4. No.

6. If munsifs are not disturbed for 3 years there will be no impediment to justice.

8. It is not because of the court is waiting for the members of the legal profession that the suits are delayed. Suits are not got ready by the pleaders from a feeling of uncertainty that the courts may not after all proceed with the case. Where the pleaders know for certain that the case will be taken up by any court they will adjust their work beforehand and not at all impede the work of the Courts. What is required is a certain amount of a certainty beforehand that such and such a case will be taken up on that date by the court, as in sessions cases.

9. No.

10. I will have no change.

11. No.

13. I don't think the public will resent transfer of the proceedings to the subordinate judges and district munsifs.

16. In simple money suits, they may be allowed, except when both sides desire otherwise.

17. No.

19. I should think that Letters Patent Appeal in those cases is quite superfluous.

22. This ought not to be rigorously enforced, for it may tend unnecessarily to add to the work of the appellate Court.

Trial of Suits.

24. I would enforce the provisions of Orders X, XI, XII, with strict rigour, and thus clarify the points at issue. I would restrict the postings of cases that are to be tried to 3 a day, and 3 or 4 more to be reposted.

Pleaders concerned should be clearly made to understand that such and such cases will be taken up without fail at the next hearing and except for want of time no suit is to be adjourned. When a case is taken up all witnesses present should be examined from day to day.

28. I am not for using service through post, except when parties are literate.

29. Yes.

30. This is generally being done in mofussil courts, but this is no guarantee of honest service on the opposite side.

33. Yes. I should think so.

35. If too large a number of witnesses are cited, the courts may call on the party to explain the need for such witnesses and decline to summon any if they think they are superfluous, or irrelevant as is done in criminal cases under section 216, Criminal Procedure Code.

36. I agree with the suggestion, but I would add that affidavits in such cases should be attested by some persons in high responsible posts.

37. No, but the courts should strongly put down irrelevant or unnecessary questions either in chief-examination or cross-examination.

41. The suggestion may be adopted.

46. Generally they are consulted and no special law is necessary.

47. No.

58. Yes. I would insist on payments being made through the channels noted herein.

60. No.

61. Not necessary. It can go with the execution notice.

63. Notice at the first instance should be held sufficient, and the party may thereafter appear in all stages as in suits.

65. No.

Mr. S. JAGANNATHA ROW, called and examined on Wednesday, the 13th August 1921.

Sir T. Desikachari—Q. You have sent us a very nice memorandum on the work of the panchayat courts. I suppose you have been connected with the work of these courts for some time. What is your experience ?

A. Yes, I had the occasion of coming into contact with these panchayat courts.

Q. You are said to be the representative of the panchayat courts in Krishna district. In what way do you represent them ?

A. In the way that they are working well and I watch their progress.

Q. Are you the chairman of the municipal council, Masulipatam ?

A. Yes

Q. You believe that people incur expense and suffer trouble by going to the munsif's court ?

A. Yes.

Q. Do you think that it is a matter which might well be prevented ?

A. Yes, if jurisdiction is given to the panchayat courts

Q. Do you think that exclusive jurisdiction if given to the panchayat courts would prevent petty cases going to the munsif's court ?

A. Yes, most of the petty suits will not be launched at all. People who give false evidence before the munsifs will not dare to speak untruth before the members of the panchayat courts who would be their neighbours.

Q. Then you think that the first advantage of having these courts would be economy, for the people would not be required to take their witnesses to the munsif's court and the second you seem to think is that the witnesses are not likely to tell lies before the courts, *i.e.*, before their neighbours and villagers. Is that your point ?

A. Yes.

Q. Do you recommend disposal of petty suits by these panchayat courts and exclusive jurisdiction being granted to them ?

A. Yes.

Q. What would be the limit that you would fix ?

A. Rs. 200.

Q. Would that not be too much ?

A. I think it would not be considering the fact that we have given jurisdiction up to Rs. 50 to the village courts and therefore jurisdiction up to Rs. 200 can well be given to the panchayat courts.

Q. Do you mean to say that the village courts should also be maintained along with the panchayat courts ?

A. Yes, but the village courts should exercise jurisdiction up to Rs. 50 so that there may not be a large number of small suits before the panchayat courts.

Q. You seem to think that litigants are generally in the hands of touts and these touts take them to the district munsif's court ?

A. Yes, most of the litigants are not literate and so they will necessarily look for assistance and support.

Q. How many villages are there in your district ?

A. More than 2,000.

Q. You want a court in every village ?

A. Where the population is not less than 300.

Q. I think there are at least 1,000 villages of that description in your district.

A. Yes.

Q. Do you want 1,000 courts then ?

A. Yes.

Q. Do you think that it would be practicable ?

A. I think so.

Q. Do you think that the members of the panchayat courts realize their responsibility ?

A. Yes.

Q. Is there any complaint now that the panchayat courts are not realizing their responsibility ?

A. I cannot say that there is any complaint but I presume that, because most of the suits are not filed there.

Q. How would you prevent the existence of this complaint ?

A. If we take away the concurrent jurisdiction of the district munsifs and make it obligatory on the parties to file their suits in the panchayat courts.

Q. Would that make the panchayat courts realize their responsibility ?

A. I think then they will realize their position better.

Q. Would there be any appeal against their decision ?

A. Revision to the district court.

Q. That would increase the work enormously ?

A. I am relieving the district munsifs.

Q. You see the district munsifs' courts disposed of 18,000 suits and if your scheme is given effect to do you think that each court will be able to dispose of 180 suits ? I want you to realize the practical problem involved. Do you think that they will be able to do this work ?

A. I think Panchayat Courts would be able to do 60 or 70 on an average.

Q. What about the execution of decree by these courts ?

A. It must be left in the hands of the district munsifs, and the village officers should help them.

Q. I suppose you have read the Village Panchayat Court Act. At present execution is done by the village munsifs ?

A. Yes.

Q. If it is a question of arrest then is it taken to the village munsif ?

A. No power of arrest is given.

Q. It must be taken to the district munsif ?

A. Yes.

Q. Would you continue that system ?

A. Yes, for the present I would like to continue that system.

Q. Are the members of the village courts all elected ?

A. Not all.

Q. What proportion ? I have not got the Village Panchayat Rules with me.

A. In some places there are *ex-officio* members.

Q. The rest are all elected ?

A. Yes.

Q. Is the election satisfactory ?

A. Under the prevailing circumstances it is not quite satisfactory.

Q. You seem to think that the deputy collector should have a determining voice in the selection of the members of the panchayat courts ?

A. Yes.

Q. If that is done you think that the panchayat courts are likely to do well ?

A. Of course the personnel will improve.

Q. I cannot take you through the rest of your memorandum, but do you wish to add anything to it ?

A. I will simply elaborate what I have said in a concise form. My proposals are that in all villages, of population of three hundred and more, there must be a panchayat court, and till elementary education is made compulsory I will have partly nomination and partly election. I would further suggest that villages, where there are fa ti ns, should not have the benefit of the panchayat courts. The jurisdiction should be transferred to the next panchayat.

Q. Is there anything else that you want to tell us ?

A. No, nothing more.

Mr. Justice Stuart.—*Q.* What safeguards would you provide against an improper decision, where the members of the panchayat courts are unanimous ?

A. Revision to the High Court.

Q. Will not such a provision tell against both economy and expedition ? You know how long a revision to the High Court takes to be decided ?

A. When the panchayat is formed of persons noted for experience and education there must be some finality to their decision.

Q. I want to know how you would get over a case where a panchayat deliberately goes in favour of the wrong party. After all the members are human and you can expect these cases to arise ?

A. That contingency arises even if cases are tried by other courts.

Q. But people have greater safeguards against perverse decisions by other courts. In the case of panchayat courts you are giving them the widest jurisdiction. Any man who has got a case under rupees two hundred must take it to the panchayat court, whether he likes it or not, and that decision is to be absolutely final, except in case of difference of opinion, subject to revision by the High Court.

A. I will give a right of revision to the High Court, as in small cause court suits.

Mr. Sastri.—*Q.* Is the election in your district fought by both *kammas* and *kappus* ?

A. There was some cleavage brought to notice at the last elections.

Dr. DeSouza.—*Q.* Is it carried even to the municipal elections ?

A. I do not think so.

Mr. Sastri.—*Q.* In the Legislative Council election ?

A. Yes. There was a sharp division at the last election.

Dr. DeSouza.—*Q.* I suppose it is growing more and more acute ?

A. I think that they have a better experience of cleavage now.

Q. You think that people are beginning to get more reasonable as time goes on, than they were in the past ?

A. That is the benefit of education.

Q. I suppose *kammas* are money-lenders, and *kappus* are cultivators and most likely to be defendants and not plaintiffs before the panchayat courts ?

A. In some districts.

Q. And if elections are held, as they are being held at present under the scheme of the Panchayat Act, a large majority of the panchayat courts will consist of the *kammas* ?

A. If the election is held by the vote of all the adult members, then, perhaps it may not be the case.

Q. But generally it is happening to-day ?

A. Yes. It is happening.

Q. If the courts consist of money lenders and the defendants are mostly borrowers and debtors, would not the debtor feel a little hesitation in approaching a court composed of those men ?

A. When a question comes of meeting out justice, I do not think that tha notion will prevail.

Q. It is a question of economic difference ?

A. Even then if a debtor goes to the creditor, he does him justice.

Q. But does not that account for the phenomenon that you mention, that a considerable number of litigants prefer to go to the munsifs' courts rather than to the panchayat courts ?

A. People go to the munsifs' courts because they rely upon a third person they themselves not being literate.

Q. You subject their decision to the revision of the High Court. Does not a revision to the High Court presuppose a well kept record and a properly written judgment ? Is it possible to get such things in the villages ?

A. Sometimes they are asked to take down notes.

Q. Do they do so at present ?

A. They do take down some notes.

Q. When revision petitions are filed, men with the acutest brains in Madras will be engaged to see if there is any flaw in it. There will be innumerable loop holes in the decisions of the panchayat courts ?

A. Then you must restrict the procedure to the minimum convenient.

Sir T. Desikachari.—Out of nearly two lakhs of suits tried by the panchayat courts, there were only 232 revisions to the High Court. There is no use thinking of things without statistics. So far as we can see the revision was very very rare. In spite of want of attention and unwillingness of people to resort to panchayat courts, revision petitions are very few ?

A. Exactly.

Mr. Rao.—*Q.* We have been told by some of the witnesses that the panchayat courts do not enjoy the confidence of the public and that they should not be invested with exclusive jurisdiction. What is your opinion as to that ?

A. I do not think that that statement is altogether wrong.

Q. To what extent will you qualify it ?

A. I will say that they are becoming unpopular. I have given my reasons. It is not that panchayat courts are intrinsically unfaithful to the suits which are brought before them, but that people have no faith in them for want of education. They always think that justice is done better at a distant place, with all the glamour of the office.

Q. Then that is not a well founded impression ?

A. Exactly. The reasons are not because the panchayat courts are doing injustice but because the litigants think that if they go to a distant place, they will find better justice.

Q. On the whole you think that panchayat courts do render justice ?

A. In fact they are doing very well.

Q. If you give them more responsibility do you think they will do better ?

A. Yes.

Q. We are also told that Village Munsifs take a leading part in the panchayats. Is that so in your part of the country ?

A. Of course, if the officer happens to be invested with some criminal powers also, he has got a predominant voice.

Q. He manipulates the elections in such a way that he gets his own men in the village panchayat.

A. I don't think that almost all munsifs are paramount in their places.

Q. Supposing they are kept out of it altogether, would you favour it ?

A. As I am having village courts apart from panchayat courts, my opinion is that he should not be in panchayat courts.

Q. Would you keep him out even in the conduct of the elections ?

A. If the people are educated, I don't think the village officers can do as much harm as they are doing at present. It is now the karnam that is doing more harm than the munsif.

Q. Do you think that he is an indispensable necessity for the conduct of these elections ?

A. I don't say he is indispensable, but I don't see why he should be deprived of his franchise.

Q. But still it seems to us that if he takes a leading part in the conduct of the elections he may do some harm.

A. There should be a restriction as there is now with regard to karnams.

Q. What is the restriction that you would have ?

A. Just as in the case of higher revenue officers, who are not expected to take part in the elections for the legislative assemblies.

Mr. Justice Stuart.—*Q.* How do you propose to stop it? What is put to us and what seems to be borne out by facts is this. The difficulty about your village elections is that the two biggest wire pullers in the village are usually the karnam and the village munsif, and that they control the election.

A. Yes.

Q. Occasionally they fight on opposite sides and the result is not good, and occasionally they fight on the same side and the result is then worse. The so-called village election is merely an election of the nominees of these two men, who, everybody tells us, are at the bottom of half the false litigation in the village. Do you think you gain anything from a body which is under the control of that class? Will you get good panchayats at the beginning? Of course I am in sympathy with your aims and ideals. I want to find safeguards.

A. Their predominance is felt only if there are factions in the villages.

Q. How many villages are there in which there are not parties? Is it not a fact that in a large majority of villages there are parties and that it is only in a minority that there are not parties. At present you have got one safeguard that panchayats have not got exclusive jurisdiction.

A. Yes.

Q. So long as they have not got exclusive jurisdiction the difficulty is likely to be very little. Once you give them exclusive jurisdiction, you will have the people tied hand and foot and they can do anything.

A. But is there not advantage on the other side?

Sir T. Desikachari.—I suppose there are at present non-official presidents of taluk boards.

A. Yes.

Q. I think in each taluk board he commands sufficient prestige.

A. Yes.

Q. If the village munsif and karnam are kept out of elections, they can conduct the elections.

A. Yes.

Q. As a matter of fact many disputes in villages are disposed of by panchayats.

A. Yes.

Q. They are informal panchayats.

A. Yes.

Q. It is nothing new to the Indian villages to have disputes of this kind settled by panchayats.

A. Yes.

Q. There has been a regulation under which they were invested with criminal jurisdiction and people were put in stocks.

A. Yes.

Q. There is nothing new; this exercise of judicial powers by village authorities.

A. No.

Dr. DeSouza.—*Q.* You spoke of caste disputes being settled. What is the kind of dispute that they generally settle?

A. Disputes with regard to maintenance, encroachments of small nature, disputes regarding marriage and marital relations.

Q. Does the decision generally give satisfaction?

A. Certainly.

M. R. Ry. B. RAJA RAJESWARA SETUPATI, M. L. C., Raja of Ramnad.

Written Statement.

I presume my qualifications to offer any detailed criticism on the existing machinery with reference to the delay caused in the administration of civil justice can possibly be nothing more than one based on personal experience. I may fairly claim sufficient knowledge of the dilatory methods that attend civil litigation both as party in several civil suits and as one directly or indirectly interested in many others. I hold the strongest opinion that there is considerable delay in the disposal of suits and execution petitions which is avoidable, and keeping in view the injunction of the Government of India that the question of strengthening the judicial establishment maintained in each province is not to come within the scope of the enquiry by the Committee I offer my remarks which are as follows :—

2. I am entirely in favour of the newly recruited district munsifs from the Bar, who however ought not to be mere beginners in the profession, being required to serve a period of a year or two as ministerial officers so that they may have a good grounding in the administrative work of the court.

3. I think it will also be advantageous to give sufficient training in the trial of civil suits to I.C.S. officers at the commencement of their career and the experiment so far made in this direction, though meagre, I think, has proved highly satisfactory. There does not seem to be any serious objection to some of the young I.C.S. officers being posted as munsifs or required to try civil suits transferred to them off and on, by the District Judge. This will enable them to do their work as district judges, when promoted as such, more satisfactorily than at present.

4. In my opinion too many courts in one place and consequently too many lawyers always resulted in delays and multiplication of litigation. I should advocate the location of courts in different places so that each court may have its own limited number of lawyers and the work could be got through without systematic invasion of eminent lawyers from outside, which means delay. I think some attempt ought to be made in the annual turn-out of lawyers by restricting the number of admissions. We have more lawyers in the presidency than is really required by the volume and extent of litigation and existence of courts. The surplus among the existing lawyers may be recruited for subordinate magistracies which sorely need legal element. 75 per cent. of sub-magistrates to be appointed hereafter may go to lawyers, while 25 per cent. may be retained as promotion posts for service men in the lower rungs of the revenue department to whom hopes have been held out at the time of their admission into service, new entrants being definitely told that they should no longer expect these appointments.

5. One great delay in the trial of suits is the time taken by the party for filing written statements and for actually beginning the trial and securing necessary witnesses. It is adjournments, which are the order of the day in almost all the courts that really cause protraction. It is not merely the inability of the subordinate judiciary to harden their hearts and refuse adjournments but also the tendency of the rich to exhaust the resources of the opponents that contributes to the delay. Therefore simplification of the proceedings would seem to be extremely necessary. More than the party, lawyers multiply points unnecessarily and import too many details into the plaint as well as in the written statement and so it will considerably reduce time and labour as also the necessity for filing a mass of irrelevant documents and examination of unnecessary witnesses if both the plaintiff and the defendant are examined as witnesses and issues are framed thereon. I am not without hopes that, if this be done, in most cases the necessity for even examining witnesses may not arise.

6. Delays are caused not infrequently by the lawyers having to attend in several courts and sometimes in several places on one and the same date. I am strongly in favour of making a rule that once a trial of a suit is taken up it should continue

from day to day (*de die in diem*), until the case is finished. In the sessions court and in the Original Side of the High Court this is being invariably done and I fail to see why the same should not be done in all the courts in the presidency.

7. It will also considerably facilitate the quick disposal of suits if the parties are required to admit the documents necessary for the suit and all the interested persons are made parties. I am in favour of partners being required to compulsorily register themselves. When a suit under exceptional circumstances happens to be adjourned, the court should so arrange that it will pass on and come back for trial on a particular date for certain when the court would have disposed of other suits lower down in the list.

8. It would be highly advantageous if appeals over the decisions of district munsifs are heard and disposed of by the district judges in whose courts really they are as a matter of fact filed, without being transferred to subordinate judges. At any rate the district judge with the prospect of becoming a Judge of the High Court, where the bulk of the work is appellate, should not be denied this opportunity of gaining the necessary knowledge in disposal of appeals in the district court. I should limit the sessions work for one week in a month and allow two weeks for hearing of appeals over the decisions of district munsifs and the remaining one week for miscellaneous work. Rent appeals now heard and disposed of by the district judges may conveniently be transferred to subordinate judges by amending the provisions of the Estates Land Act (Act I of 1908).

9. I think one way of affording relief to the overworked judicial officers would be to give them stenographers to record evidence of witnesses in big suits. The recording of evidence, I think, taxes the presiding judge very considerably and it will probably enable him to appreciate the evidence better and also keep a calm temper without fatigue or depression if this relief is afforded. Of course, he can dictate the witness's answer in his own language and this will contribute not a little to the quick disposal of cases.

10. I see the view is held that champerty should continue in the interest of the poor but my experience is that in the long run the poor man became very much worse off than what he was ever before, when once he succumbed to the temptations of the money-lender to embark on speculative litigations; even where he succeeded, the fruits of his litigation always went to the money-lender irretrievably; not infrequently his original properties even being lost for satisfying the rapacious instincts of the money-lender. I am decidedly in favour of penalising the benami and champertous transactions. If this is done, I am positively certain that the volume of litigation will very appreciably diminish and the beneficient result to the public can hardly be adequately estimated. It is the money-lenders that foment and foster litigations by resorting to champertous practices and when once this is prevented it will act as a check on the flood of litigation that is otherwise the result. Not merely on this ground but also on grounds of public morality, this kind of gamble should be disallowed.

11. I am in favour of also summary trials regarding suits for Rs. 500 and below by district munsifs and Rs. 2,000 and below by the subordinate judges. This, in my opinion will, while not causing any undue hardship on the litigants, will tend towards quick disposal of cases.

12. I am in favour of increasing the valuation of suits triable by district munsifs up to Rs. 5,000. I think in money suits from the district munsif's court one appeal is quite sufficient and the second appeal should be disallowed.

13. The Judges should be strictly enjoined not to admit irrelevant questions or allow undue length of arguments. Even on questions of a trifling nature I have known instances where vakils, for the sake of their day fees, continuing arguments for several days and thereby the trials being protracted to undue lengths.

14. If every judicial officer is required to record his reasons for granting adjournment in every case when once a trial is taken up and the same is scrutinised by higher authorities during their inspection, that would act as an effective check on the tendencies of a weak-minded official in granting too many or unnecessary

adjournments. I would even go to the extent of suggesting that those found to have granted adjournments without sufficient justification should be debarred from promotion.

15. In the matter of adding legal representatives in place of deceased parties the village officers can be required to furnish the information and this will considerably facilitate speedy disposal of suits and executions.

16. Interrogating judgment-debtors about their properties and their ability to pay the decretal amount and requiring the adversaries to admit documents will also in my opinion considerably facilitate early disposal of cases and execution petitions.

17. In the matter of payment of court fees if the fees be not paid in full on the given date the plaint must be summarily rejected.

18. I think it should be made obligatory that all witnesses irrespective of their position and status should appear in court and give evidence, for no one, however exalted in position he may be, is above law, and, except gosha ladies and that too owing to the peculiar condition in this country, none should be permitted to be examined on commission. If for special reasons some distinguished persons should not be compelled to go to the court house, then their evidence may be secured in writing by interrogatories served on the vakils on whose side the witness is to depose.

In the case of a gosha or Pardanashin lady, as against sending a commissioner with no powers to disallow questions I should substitute the sub-magistrate or district munsif or the sub-collector or a president of a panchayat court whoever may be available in the neighbourhood to examine her and give the said officer all the powers of the court to disallow irrelevant questions.

19. I am in favour of introducing the sliding scale of fees as a check on the tendency of the parties to take adjournments and protract trial with a view either to exhaust the resources of the opponent or secure some benefit not by fair means but by such protraction.

20. I am certainly in favour of investing the subordinate judges and district munsifs with jurisdiction to try probate and succession certificate proceedings and land acquisition proceedings. I shall not make any invidious distinction by choosing select officers among this class of officers. I am against conferring any jurisdiction on village courts and panchayats. From my experience of these bodies I am not very much enamoured of them and therefore I shall not entrust them with any more powers, particularly where selection of these panchayatdars are not made on any accepted or well understood principle. Nor am I in favour of investing the sub-registrars with jurisdiction to try any class of cases. I am in favour of requiring the parties to give a registered address for service which must be deemed to be a good service for all purposes of execution.

21. I think it would not be very desirable to place a time limit for the examination or cross-examination of any witness. If the presiding judge would only exercise an effective check on the tendency of the lawyer to protract trials and make them put only relevant questions to witnesses I think that must be more than sufficient.

22. It is very desirable to throw the duty on a legal representative to come forward and request the court to add him as a party on pain of being bound by the decree in cases where it is proved that he had knowledge of the proceedings. I think in this connexion the services of the village officer concerned particularly the Headman can be advantageously availed of.

23. It will considerably facilitate quick despatch of business if the plaintiff be required to name all the possible guardians in one petition for appointing a proper guardian *ad litem* for minor parties and the court should appoint the one among them best fitted to safeguard the interest of the minor.

24. I am in favour of plaintiff being required to file an encumbrance certificate in respect of the property mortgaged for the period for which such certificate is available in the registration offices.

I am in favour of persons whose names appear in such encumbrance certificates or their legal representatives as a rule being made parties to suits and the failure to do so rendering the suit liable for dismissal for non-joinder of parties.

I am in favour of allowing courts to presume that a mortgage-deed is valid till the contrary is proved by the party that disputes it.

I am in favour of all parties to the suit being allowed to plead their rights to the mortgaged property, such rights being finally determined in that suit, at all events, if the plaintiff so desires.

25. Considerable delay could be saved in the disposal of appeal by requiring the original courts to print the documents. This will also in a way though indirectly place a check upon the tendency of the parties and their lawyers to file all kinds of documents relevant or irrelevant indiscriminately in the original court. When one finds that only a small fraction of the documents filed in the original court are printed for use in the appeal I think my comment on the indiscretion of the parties in filing documents in the original courts will not be considered excessive.

26. I am in favour of all future partitions of immovable properties being evidenced by registered documents, as also compulsory registration of contractual partnership.

27. I am in favour of the cost of registration being made uniform in the case of discharge of obligations created by registered documents and the same being made valid only if there is a registered document to evidence it; when the amount or obligation involved is small those cases may be exempted.

28. No party who is a party to a document should be permitted in my opinion to say that the document executed by him was a sham never intended to be acted upon or that the apparent owner of property in whose name the title-deed stands is not the real owner. It is the indulgence that the law gives him at present to put forward all these absurd and inexcusable pleas that makes it impossible for a decree-holder or a successful party to a suit to realise the fruits of his decree.

29. I am in favour of courts referring suits with the consent of the parties to selected persons for arbitration. I am sure the extension of this system will go a great way to secure finality in suits and also speedy disposal of long pending suits thus contributing to the happiness of the parties concerned.

30. In my opinion judgments of courts are unduly long and unnecessarily elaborate. The delays in the trial of suits in this province I think is mainly caused by the consideration more often unnecessarily shown to the convenience of the lawyers than to the requirements of the cases.

31. I am strongly in favour of limiting the law reports to those published under the authority of the Local Government and the provisions of Act 28 of 1875 in this respect, which has been honoured more in the breach than in the observance, should be strictly enforced and any departure viewed with disfavour by higher authorities. A world of confusion will be avoided by the unauthorised reports, all and sundry, not only of this presidency but of every part of the country nay, even every part of the world, not being permitted to be quoted and used in judicial proceedings.

32. I am very strongly in favour of doing away with receivers for adjudication of insolvents. When an application is made to adjudicate a party as an insolvent I think the court itself must take up the question and decide whether or not the party or the judgment-debtor should be adjudged as an insolvent.

Releasing an applicant for insolvency on sureties has created any amount of trouble besides a crop of litigation and I think the sooner this system is put an end to the better it will be for all concerned. The decree-holder naturally is interested in shifting the liability to pay his decree amount from the judgment-debtor to the sureties and so either he colludes with the judgment-debtor and makes him default and thus secures a hold on the surety or has recourse to questionable practices in influencing the receiver to somehow substitute the sureties for the judgment-debtor.

Of course, if insolvent proceedings are also conducted by the district munsifs that will occupy a portion of their time which may be otherwise available for trial of suits but after all such applications must be few and far between and considering the great scandal that would be once for all removed by the abolition of the so-called receivers the time spent by the munsifs may be, I think, considered worth spending. I am against also the frequent transfer of judicial officers which must necessarily hinder efficient adjudication of cases and cause delay.

33. I am in favour of considerably reducing the scope of revisions and reducing the period of limitation in the case of decrees from 12 years to 6 years. If it is not possible for a decree-holder to realise the value of his decree within six years it may be fairly presumed that he will not be able to do so within 12 years.

34. Now coming to execution the greatest delay is caused by the judgment-debtor moving from place to place outside the jurisdiction of the court. When a warrant is issued by a court it must be possible to arrest a person anywhere within the presidency and it happens not infrequently that a judgment-debtor stops at the boundary and escapes arrest. If it is considered too much to invest a District Munsif or a sub-judge to issue a warrant beyond the limits of the Presidency, then the decree-holder must be given the right to move the High Court to issue an arrest warrant so that it may be possible to arrest the judgment-debtor wherever he may happen to be within India, including Burma. Another difficulty in this direction comes when the judgment-debtor goes to territories under alien governments such as French or Dutch possessions in India and to Native States. It must be possible to come to some international arrangement by which these judgment-debtors could be reached by merely transferring decrees for execution as it obtains in British India. The existing system requires British Indian judgment-debtors to be sued on again in foreign states and Native States and *vice versâ*. In addition to heavy cost it entails great hardship, enormous delay not infrequently ending in the creditor not obtaining any satisfaction even after such protracted proceedings. So some international arrangement by which a decree obtained in any one place will be respected in other places and allowed to be executed, if made, will considerably reduce delay and remove hardships.

35. Considerable difficulty is felt by the inefficient or dishonest work of the present set of process-servers and I find there is some suggestion that the village officers may be entrusted with the work of the process-servers. The village officers like the process-servers have no control or check over their work and therefore I very much doubt if they will prove a better substitute for the process-servers. In criminal cases parties or witnesses are secured without any difficulty through the local police and I don't see why the local police, whose work is controlled very closely and continuously by superior officers, should not be entrusted with the work now done by the process-servers. At any rate this system is in my opinion worth being experimented in select areas.

36. Execution is purposely allowed to be protracted by the judgment-debtor as he is under the Act required to pay only six per cent interest from the date of the decree as against the covenanted rate of interest which may be 12 per cent. or even more. It is to his interest to get a decree and delay execution so that he may have the benefit of a reduction in the rate of interest. This is also one of the causes that contributes to the delay in execution.

37. In the case of money decrees under a certain amount it should be made incumbent upon the appellants to deposit the money before the appeal is admitted, and the respondent permitted to draw the same on furnishing the necessary security to the court.

38. It must be more than sufficient if judgment-debtors are given one notice at the beginning of execution petitions and it is ordered they should be present in court at all subsequent stages in respect of that execution petition, *viz.*, for settling of the proclamation, fixing of the sale, grant of permission to the decree-holder to bid, etc.

39. It must also be sufficient service if notice of execution petition be served on the vakils who appear for the judgment-debtor provided a rule is made that the vakil who is appearing for the judgment-debtor is bound to receive such notice and give due intimation thereof to the judgment-debtor. It is my experience that often where a judgment-debtor is not available for years for appearance in court or arrest, somehow he is available to his vakil and corresponds with him. So when a rule as suggested above is made it will be the duty of the vakil to know the whereabouts of his client as much the interest of the client to keep the vakil duly informed of his whereabouts. This will considerably facilitate, from the decree-holder's point of view, early realisation of the fruits of his decree.

40. I am in favour of all sales in execution of mortgage-decrees being free from all encumbrances and the puisne and prior encumbrancers being allowed only to attach the money in court.

41. I am in favour of appeal courts granting stay of proceedings in execution only very sparingly as also the appeal courts being invested with jurisdiction to award exemplary compensation in cases in which they are satisfied that the stay of proceedings had been asked for on insufficient grounds, the quantum of compensation depending upon the nature of the decree under execution.

M. R. RY. B. RAJA RAJESWARA SETUPATI, Raja of Ramnad, called and examined on Friday, the 15th August 1924.

Mr. Sastri.—*Q.* You are the biggest landholder south of Madras, and president of the Ramnad district board ?

A. Yes, I am a landholder, but whether the biggest or not I don't know.

Q. You are a member of the Legislative Council and were a member before the last election ?

A. Yes, for three terms I have been there.

Q. You also happen to be a plaintiff or a defendant in many cases ?

A. Yes, very many cases.

Q. So whatever you say is from your own personal experience ?

A. Yes.

Q. As regards recruitment you say that it is better that district munsifs should have one or two years training in the ministerial work. What do you mean by that ?

A. They will have a routine knowledge of the working of these courts. Some years back we had a system of appointing sheristadars as district munsifs. Then they acquired sufficient knowledge of the ministerial work of the court. That system has been given up. They may be asked to keep themselves attached to some court and learn the routine work.

Q. Do you think it is necessary ?

A. The period must vary with the capacity of the individual. If they are quick the period may be made shorter.

Q. You will attach them to a district court or a subordinate court before they come out as munsifs ?

A. Yes.

Sir T. Desikachari.—*Q.* They are practising lawyers and with some years of practical experience at the Bar according to your scheme. If they are practising lawyers they will have a fair knowledge of the work, of the administrative work the nazarat and so on. And don't you think it will be too much to ask such people to go and do clerical work in a subordinate court or a district court ?

A. I am only speaking of administrative work. There are ever so many things such as submitting of findings to the appellate courts, sending of periodical returns and so on. They can learn these things before instead of beginning fresh in the munsif's court. The period will depend upon the volume of work. I don't mean that he should work as a clerk or in a subordinate position. They may get themselves attached to some of these courts for the necessary training.

Q. Let us take Dewan Bahadurs Viswanatha Sastri and Krishnaswami Rao. They didn't receive any training in administrative matters. They made efficient munsifs.

A. That must depend upon the temperament of each person.

Mr. Sastri.—Q. All that you want is that they must have some training in administrative work and you say that such officers will be good ?

A. Yes.

Sir T. Desikachari.—Q. As a matter of common experience you find that district judges are hopelessly inadequate for civil work. The existing practice does not seem to create a different opinion in the minds of the public. There may be some exception. But as a rule, are district judges found wanting for any kind of civil work ?

A. Civilian Judges are found wanting on the civil side.

Q. And the public feel that it is an anomaly that a district judge with no experience should sit in judgment over experienced subordinate judges ?

A. Yes.

Dr. DeSouza.—Q. You would give them proper training ? That is what you want ?

A. I would lay down likewise that a subordinate judge in his early career may be asked to do criminal work before he is taken as sessions judge. My view is that those who have some prospects of becoming subordinate judges or district judges even as munsifs they should try some first class and second class cases before they are appointed as additional sessions judges, with large powers.

Mr. Sastri.—Q. Your experience is that experiments made so far in this direction have proved satisfactory? One has been made a Finance Secretary and another Secretary in the Local Self-Government department and so on, out of three people trained.

A. I am against these judicial officers being made executive officers and drafted to the Secretariat. They must be left for the administration of justice alone. I am positively against executive people being taken up as district judges.

Q. You say that accumulation of too many lawyers at a particular place causes delay ?

A. Yes, with proper jurisdiction and without overlapping of jurisdiction courts can be distributed at various centres without causing undue hardship to the parties.

Q. You were instrumental in having a court at Ramnad ?

A. Yes, in having that court in Ramnad. I am one of those who advocated the location of the court at Ramnad.

Q. You suggest to limit the number of lawyers ?

A. Yes. Automatically once these courts are located at different centres that will be a natural process. There will be only a limited number of lawyers. Instead of having 800 or 900 you will have 30 or 40.

Q. You don't mean to limit the number by statute ?

A. No.

Mr. Rao.—Q. There are other advantages in having a centralised Bar. You will not be able to get expert advice if the courts are thus distributed.

A. Yes, from the lawyer's point of view.

Q. From the litigant's point of view also.

A. No. You will have greater possibility of securing witnesses with greater facility than at present.

Q. You go to the headquarters station and bring a vakil.

A. That is one of the evils of litigation enamoured of by the bigger lawyers. The judicial officers have greater consideration to these people and they are tempted. One is, I suppose, human.

Q. They put their cases better than other vakils and they facilitate the work of the courts and take up less time.

A. That is the general impression. Bringing a lawyer with a larger practice secures a decided advantage.

Q. You will lose the advantage of having a good library.

A. Necessary number of books may be had from the court library itself. A small decent library may be attached to the Court itself.

Mr. Radhakrishnaiya.—*Q.* Doesn't it save a good deal of time in his argument if a lawyer can find decided authority ?

A. But where is the limit ? A district library may be better than a local library and library at the headquarters of a presidency may be still better.

Q. Why should there be any limit ?

A. Some disadvantages must necessarily be there in the mofussil stations. That cannot be abolished.

Q. You want to increase the disadvantages by placing courts far away.

A. I don't think it would be a disadvantage.

Sir T. Desikachâri.—*Q.* Well, Rajah Sahib, Your point of view is that from the litigant's point of view it is best to have the courts located as far as possible in the centre of its territorial jurisdiction. It will prevent spending lot of money to bring the witnesses, feed them and so on, for having their litigation conducted ?

A. Yes, I have in view the small litigants.

Q. So you say that if the system of establishing courts at the various localities of the district is adopted it will help the litigants ?

A. Yes.

Mr. Rao.—*Q.* On the same principle it is that a court was established at Devakottah ? I am told that for most of the cases there vakils are going from Madura.

A. That is because the jurisdiction is not properly worked. Devakottah has jurisdiction over Ramnad and it is cheaper to bring a vakil from Madura.

Q. Litigation is expensive on that ground then ?

A. Litigation is expensive on every ground.

Q. Suppose a central court is constituted with different judges attached to it instead of having independent courts at one and the same station ?

A. Then it makes no difference from the client's point of view.

Q. The work will be distributed by the senior officer.

A. But it would afford no relief to the parties. The difficulty of bringing witnesses from long distances will not be in any way minimized.

Mr. Radhakrishnaiya.—*Q.* Do you think it is better to bring them from long distances once or twice ?

A. Once or twice has never happened in this part of the country.

Sir T. Desikachari.—It must be ten times.

A. Certainly. I know of a case which was with reference to the theft of a mangoe fruit in which the witnesses had to be brought many a time and the parties spent lakhs of rupees. In that case nearly all the big vakils and barristers were engaged. This was at the time when Mr. Pinhey was the district judge of Madura.

Mr. Justice Stuart.—*Q.* In a case of that kind can there be any remedy ? And is one wanted ? If two men have got such a mentality that they wish to spend lakhs of rupees on such a case is it necessary to protect such men ?

A. My point is that the engagement of these senior vakils does not necessarily indicate complexity of a case.

Q. If that is your point we all agree.

Mr. Sastri.—*Q.* For the simplification of proceedings you have suggested that the plaintiff and the defendant should be examined before the issues are framed. The complaint is that the courts are so overworked that they have no time to examine the parties on the day the case is posted for the settlement of issues, but the law permits this to be done.

A. If the law permits, it ought to be enforced at once because it would really put an end to unnecessary delay.

Q. Your idea is that the points in issue should be narrowed ?

A. Yes.

Q. Will you have any objection if something of this kind is done when the trial has once begun ?

A. Once the issues are framed the tendency of the parties seems to be to secure evidence to cover those issues and therefore if the plaintiff and the defendant are examined then the framing of issues themselves can be considerably reduced.

Q. You suggest that the trial once begun must go on from day to day till the case is finished ?

A. Yes.

Q. Even now the High Court rules require this, but they are not followed.

A. There is no need for keeping such rules then.

Sir T. Desikachari.—*Q.* Are part-heard suits many in these days ? Are as many as five fixed for a day ?

A. Yes.

Mr. Sastri.—*Q.* Coming to the appeals you suggest that all appeals be heard by the district judges ?

A. Please excuse my interruption. Not only that the cases are taken and tried piece-meal but even witnesses are examined piece-meal. My evidence was taken in a case and it was adjourned to next day before even the cross examination started.

Mr. Justice Stuart.—*Q.* Is it common to take the evidence of a witness for an hour on Monday and then for three-quarters of an hour on Tuesday and then for an hour on Wednesday and so on and to keep him for ten days or so ?

A. That is what is happening.

Q. Possibly you can give us some particulars as regards your own litigation. I mean you can give us some information about the cases in which you were a party.

A. I have brought one or two cases just to show to the Committee.

Q. What was the last case you were engaged in ?

A. I have not brought big cases with me.

Q. I want to ask you whether you have been a party in any important suit ?

A. In very many big suits.

Q. Just give me any one you can think of and tell me its duration.

A. Some big suits have been fought out for ten to twelve years.

Q. Can you give me a reference ?

A. There was a suit which went to the Privy Council. It was a very big suit.

. What was that suit ?

A. That was a suit based upon a claim for a large number of estates on the strength of documents executed by my father. That was brought against me by a trustee when I was a minor.

Q. How long was it from the institution to the decision of the subordinate judge in that suit ?

A. It was instituted in 1900 or 1901.

Q. When was it decided by the subordinate judge ?

A. In 1907 or 1908.

Q. How long did the appeal take in the High Court ?

A. Two or three years.

Q. So it was ten years before the final decision was given ?

A. We went to the Privy Council and it took another two years.

Q. What was the result ?

A. I won it.

Q. The suit was eventually dismissed ?

A. Throughout the decision was in my favour. I attained majority in the year 1910 and in the High Court I was myself party.

Q. And so you won the case in every court ?

A. Yes.

Q. It took you 12 to 13 years before you got your final decision ?

A. Yes.

Q. Did you recover your out-of-pocket costs ?

A. No. Nothing compared to them.

Q. Can you tell me what you received from the other party ? Did it amount to one-sixth of what you had actually spent ?

A. About one-sixth or one-seventh.

Q. That case lasted for 13 years. May we take that as typical as regards your larger suits. Do they last as a rule for seven years in the lower court, three years in the High Court and about three years in the Privy Council ?

A. Two years in the Privy Council.

What I wanted to place before the Committee is the fact that in one munsif's court, a small suit took over six or seven years. It was a declaratory suit. I sold a tank to a community, that was claimed as a communal land. I sold it to a certain community and there was another community which wanted it. Though they offered for it, I sold it to the community which I preferred, for some social reasons. That party filed a suit for declaration and it lasted for eight or nine years in the munsif's court.

Q. How did he manage to spin it out ?

A. It went from one court to another, and then we wanted it to be brought back to the original court, which was nearer to my place. The other court refused to send it back but then it came back automatically. In the meantime there was a number of transfers of munsifs.

Sir T. Desikachari.—Nobody was willing to take up the suit.

A. For some reason or other it was not taken up.

Mr. Justice Stuart.—*Q.* What was the result of that suit ?

A. That it was a communal land which I had no right to sell. And now there is an appeal. Suit was filed in 1914. In 1917 it was transferred to another court and in 1919 it was again sent back to the original court. It was then disposed of in 1922.

Sir T. Desikachari.—What was the number of the suit ?

A. O·S 22 of 1914.

Mr. Justice Stuart.—*Q.* Then you filed an appeal before the district judge ?

A. Yes.

Q. Has it been transferred to the subordinate judge's court?

A. Must have been.

Another difficulty is that the district judge transfers an appeal to a temporary subordinate court. The subordinate judge is not able to take it up and then that court is abolished, and so it goes back to the district judge. Then it remains there for some time, and again it is sent to another temporary court.

Q. In some provinces the following remedy is applied and I want to ask you whether you think that it is a good remedy. When appeals are accumulated to a large figure, a special subordinate judge is sent down to hear the lower class appeals. He does nothing else and he sits there until they are finished. Do you think that it is a better method?

A. It is a good method but even now they are doing it in an indirect form.

Mr. Justice Stuart.—It seems to me, as far as I can make out, that the prospect of an appeal being heard in Madras in less than a year is almost negligible and that no appeal is heard in less than a year.

A. It is because of the volume of appeals.

Q. Don't you think the remedy is to send a special man to clear them off?

A. That will be an advantage. They are now doing exactly the same thing but not so scientifically. They create an additional court and send a most junior man. They ought to send experienced subordinate judges to such courts.

Q. When a man is sent down to clear off the appellate work, he should be a specially selected man and a senior man?

A. Yes. That will be a great advantage.

Mr. Rao.—The point put to you is this. When a new court is started, he gets all kinds of work to be done—original suits, execution petitions and appeals. Cannot a subordinate judge be specially selected to dispose of the appeals alone?

A. Yes. It is a great advantage but I am against juniors being promoted and posted for that sake and asked to take up big suits.

Q. What do you think of the judgments of the first appellate court? Supposing in some cases the munsif who is acting as a subordinate judge reverses the judgment of the court of first instance, his decision according to the present law, is final on questions of fact. Do you think it is satisfactory?

A. There seems to be no way out of it.

Q. I am only asking you as to whether you could suggest a way out of it.

A. What happens in a second appeal if a just newly recruited appellate authority sits there?

Q. I am asking as regards questions of fact. On questions of law the High Court can interfere. From the litigant's point of view is this system a good one? Take for instance the case where the genuineness of a will is in dispute. The court of first instance says the will is genuine. On appeal, it is said that it is a forgery.

A. The appellate judge has got the same qualification as the judge of the first court.

Q. But his decision is final. You have no further remedy. Supposing the subordinate judge goes wrong, what is to be done?

A. Where the judges differ on facts, you can provide a second appeal?

Q. On facts?

A. Yes.

Q. Do you suggest any other remedy? There is a proposal to have a bench of two judges on facts.

A. That will be helpful provided it will not multiply courts.

Q. Among the officers who are located at a station, benches may be constituted now and then to dispose of appeals.

A. It may probably be made in the case of big cases, where the interest involved is great.

Q. You would restrict it to particular class of cases.

A. Yes, not ordinarily. The district judge may certify that it is a fit case to go before the bench. Some such restriction may be placed. I am not in favour of having every appeal going before a bench of that kind as a rule.

Mr. Sastri.—Then you say that the criminal work of a sessions judge be limited to one week per month, and that he should devote two weeks to the hearing of appeals and one week to miscellaneous work. Supposing the sessions work could not be finished in one week, what should be done ?

A. Ordinarily, I said one week. If it would require more number of days, then he will get the necessary relief by way of assistant sessions judges.

Q. You suggest that the District and Sessions Judge must devote a major portion of the time to hearing civil appeals ?

A. Yes.

Q. Then you suggest that rent appeals might be heard by subordinate judges instead of by the district judges.

A. Yes. The subordinate courts can hear rent appeals.

Q. Will not that necessitate an amendment in the Madras Estates Land Act ? Can you not suggest the amendment ?

A. I am not in the confidence of the Government.

Sir T. Desikachari.—As a matter of fact you think that rent appeals might as well be heard by subordinate judges and that there is no magic in having it before district judges.

A. On the contrary there is the disadvantage of the district judge never hearing it for a long time.

Mr. Sastri.—You suggest the recording of evidence by stenographers.

A. I am very much in favour of that.

Q. Then, you will have to do away with the reading of the evidence to the witness and getting him sign it. Will you dispense with it ?

A. That won't take much time. It can be transcribed and read over to the witness.

Q. Transcription means the witness must be asked to come on some other day.

A. With sufficient establishment I don't think it will take more than half an hour.

Sir T. Desikachari.—With reference to the record of evidence the Civil Procedure Code will have to be altered. Otherwise how will you prosecute a man for giving false evidence ?

A. The witness will sign it.

Q. If he is to sign it, it will take much time.

A. It will take about half an hour. The court can go on with the other witnesses in the meantime.

Mr. Sastri.—Then, you are in favour of penalising all benami transactions.

A. Yes.

Q. Do you think that the country is sufficiently educated for it ?

A. At any rate they should not be educated further in the art of benami.

Q. Then with regard to second appeals, you want to do away with them.

A. Yes, in cases of small value.

Sir T. Desikachari.—What will be the value ?

A. In the case of all money suits in munsif's courts.

Q. The munsif's court has got jurisdiction up to Rs. 3,000.

A. They are purely money transactions—suits on pronotes.

Mr. Rao.—A second appeal lies only when there is a question of law.

A. That is what I had in view also. As you suggested, if you are going to constitute a bench, there will be no need for a second appeal.

Mr. Justice Stuart.—*Q.* Are you in favour of these benches ?

A. I have stated where the decision of a munsif is reversed by a subordinate judge, there a second appeal may be allowed. But there is no need for a second appeal if benches are constituted as suggested by Mr. Krishnaswami Rao.

Q. That is not exactly the case. The idea is that appeals up to Rs. 1,000 only should come up for hearing before benches of two senior specially selected subordinate judges particularly chosen for the purpose and that their decision should be final subject to the right to state a case to the High Court if any point of great difficulty is involved and also subject to the right of appeal if the judges disagree. That is the suggestion.

A. I should not be in favour of any such arrangement in case a senior single subordinate judge is available for that purpose.

Q. Would you be in favour of giving a single subordinate judge final authority up to Rs 1,000 ?

A. Yes.

Dr. DeSouza.—*Q.* Without any right of second appeal to the High Court ?

A. Yes, only in money transactions.

Mr. Justice Stuart.—*Q.* But why not in other transactions also ? Have you ever thought how extraordinarily petty some of the other cases are ?

A. But these matters are not petty from the point of view of men who are involved in the case. On the record the matter may appear to be very simple but in reality it may be of very great importance.

Q. I have read over 100 cases in Madras and my experience is that about 70 out of them that come to the High Court are petty in their nature from any point of view ?

A. There may be some abuse in the High Court, but there are so many other things such as temple entries which are very important. They may appear to be small matters on record. I know cases which appear to others very small and petty, but are of very great importance to the parties concerned. There are many cases regarding fishing ponds and the money spent is very considerable.

Q. Do you think that two senior subordinate judges, who are competent, cannot decide such cases ? Cannot their decisions be made final in such matters ? I have also read many of your temple cases. Are not most of them concerned with officials who have embezzled money ?

A. There is a customary right of plundering temples. In some villages they do not like to have people of particular caste in temples.

Sir T. Desikachari.—You are in favour of maintaining second appeals in all cases except in money suits ?

A. Yes.

Mr. Sastri.—*Q.* You are against the witnesses being examined on commission ?

A. Yes. I was in several cases advised to subject myself to examination by commissioners, but I had always thought it proper to appear in court rather than to give evidence before commissioners. Commissioners have absolutely no power to disallow questions which are not relevant to the case. If asked by the Vakil I am bound to give my answer.

Q. Your object is to do away with the unnecessary amount of evidence that is recorded by these commissioners ?

A. Yes.

Q. Then you are emphatically against village panchayats ?

A. Yes, as at present constituted.

Sir T. Desikachari.—With regard to panchayat courts have you got the number of courts which have been opened in your district ?

A. No.

Q. A large number of courts have been constituted and they have decided a large number of civil suits. These have been constituted by revenue officials, *i.e.* sub-divisional magistrates or collectors. That is not within the province of the district boards ?

A. Orders are issued by some persons, but the process is in the hands of Government.

Q. I see 700 village munsif courts and 113 village panchayat courts have been constituted and the total output of work is 6,138 suits and the report with regard to these courts from your district is that they are functioning properly. I should like to know how would you improve them ?

A. I would like to have proper selection.

Q. What sort of selection ?

A. People of some understanding, common intelligence and of some status should be taken to dispose of such matters. Now they are selected on the reports of revenue officials.

Q. You took part in the amendment of the old Act, in 1920. You were very staunch at that time that such courts should be established.

A. I never advocated this kind of recruitment. I am certainly in favour of the word 'Panchayat' but I think that intelligent people should be appointed to constitute them.

Mr. Rao.—*Q.* What qualifications do you require for the members of these panchayats ?

A. Very petty qualifications.

Q. At present all the villagers assemble and there is no particular franchise.

A. People go to the sub-divisional magistrates' courts and selection is made by show of hands.

Q. I think selection is made by the villagers themselves according to the rules which have been framed under the Village Panchayat Act ?

A. The sub-divisional magistrate pitches his camp near the locality and the selection is made there.

Q. You would not like to have your grocer as your judge ?

A. No.

Q. If there is proper selection would you give them more work ?

A. Certainly.

Q. Up to what extent ?

A. Up to Rs. 100 or Rs. 150; even in petty land suits.

Mr. Sastri.—*Q.* Before the panchayats you say that people will speak less number of lies ?

A. Yes, otherwise they will be found out. There must be some educational qualifications also.

Sir T. Desikachari.—*Q.* There is no use of people who are illiterate being taken. The law permits anybody to get in now. Would you invest them with jurisdiction over small land suits also ? What qualifications do you think are necessary for getting a proper panchayat ?

A. They must know to read and write in the first place. They must be men with some worldly experience and knowledge. You may fix some age limit which should be over 30.

Mr. Rao.—*Q.* Any property qualification ?

A. Yes. They may be retired government servants, or retired lawyers. I don't mean by lawyers any big person such as a High Court vakil.

Sir T. Desikachari.—*Q.* Mr. Viswanatha Sastri says that lawyers never retire.

A. That is the grievance of the service.

Q. You told us that by having the suits tried in the villages witnesses are likely not to tell as many lies as in an outside court. Those who are judging would be able to find out better and the expenses also would be considerably less ?

A. Yes, very considerably.

Mr. Sastri.—*Q.* You suggest printing in original appeals should be done even in the case of first appeals ?

A. Yes, printing of the judgment and of the relevant documents may be done.

Q. Your object is simply to put down appeals ?

A. Put down irrelevant documents being filed. I know of a case where about 1,000 pattahs were filed where one would have been quite ample. It was a rent suit.

Q. As regards adjournments you think that adjournments are given more for the convenience of the lawyers than for the requirements of the case ?

A. Yes, that is the general impression.

Q. You are not satisfied with the present system of having official receivers.

A. I am strongly against it.

Q. You speak from experience.

A. From bitter experience.

Q. But would you have any objection in having whole-time receivers ? If a munsif is appointed as receiver have you any objection ?

A. No, if he is a man in harness I have no objection to the present system being continued.

Sir T. Desikachari.—*Q.* What is your objection ? Is there no proper control ? After an adjudication order is passed nobody hears anything about the estate afterwards ?

A. Yes. I am in favour of having munsifs for the place. They should not be permanent. They will be often transferred. So they will not be able to import their likes and dislikes.

Q. You want to simplify execution by not giving notice to the judgment debtor every time ?

A. Yes. That is absolutely unnecessary.

Dewan Bahadur M. KRISHNAN NAIR, M.L.C., Retired Dewan of Travancore.

Written Statement.

It is desirable that "Law's delays" in respect of the disposal of civil suits, appeals and proceedings in execution should be thoroughly enquired into and steps taken to remedy them as far as possible. I do not think that the judicial officers are really responsible for the delay which arises for the most part from circumstances beyond their control. The subordinate judges and district munsifs are officers who usually have to work at high pressure and it would be inadvisable to hustle them further. The quiet and deliberation which ought to characterise the administration of justice are often not available to the subordinate judiciary who have to dispose of a certain number of cases each quarter in order to satisfy the standard of efficiency which seems to be fixed on a more or less numerical basis. It often happens that these officers, in order to secure the required number of disposals, prefer simple suits to complicated ones and the latter are consequently adjourned from time to time raising thereby the figures showing the average pendency. The minimum number of disposals fixed by the High Court as the standard of efficiency is far too high ; and so long as the subordinate judicial officers are compelled to

satisfy this standard in their returns, the state of things indicated above will continue. It is wrong on principle to judge of the efficiency of a judicial officer by the number of cases disposed of by him without also taking into consideration the nature and the quality of the work turned out. Of course, adequate provision should be made to check any slackness on the part of these officers by periodical inspection and scrutiny of their work. As a judge of the Madras High Court observed, quick justice is no doubt very desirable but when it cannot be attained, justice with some delay is preferable to hasty disposal with injustice.

2. A good deal of the delay in the disposal of suits is due to factors which could scarcely be avoided by legislation without working great hardship on the litigant public. It is not always possible to fix any period of time for the disposal of any particular kind of suit. The time taken for disposal of a suit would depend upon various circumstances which the courts could not control. The character of the people and the economic conditions prevailing in the country generally tend to prolong litigation rather than shorten it. It is difficult for courts to get over this tendency without adopting methods which would be considered by the people to be harsh and in some cases as leading even to denial of justice. It is felt, for instance, as a great hardship if an adjournment of a suit is refused by a court. In contested suits parties take a long time to get ready for trial. The slack and procrastinating habits of the people are partly responsible for this. Another reason is the general poverty of the litigant public, which hampers them in getting their papers ready and punctually paying for professional assistance. It is only in driblets that the parties usually pay their pleaders, at any rate in courts of original jurisdiction in the mofussil—small payments being made on each date for which the case is posted—and unless a suit has had several adjournments the pleaders engaged in it would not be able to secure a reasonable fee. Thus, both the party and his legal adviser are equally interested in postponing the trial. Adjournments under the circumstances would be often prayed for, and the judges, knowing as they do the condition of things indicated above, would not be over strict in the matter. With a large number of suits posted for the day, which the court cannot by any possibility get through, there would be no justification for refusing the adjournment prayed for. Another reason for the apparent liberality of the lower judiciary in the matter of adjournments, lies in the fact that, not infrequently when adjournments are refused, even in comparatively old suits, appellate courts remand the case for fresh trial on the ground that the court below ought to have granted the adjournment prayed for—thus allowing judicially what is administratively prohibited.

3. Considerable delay takes place in effecting service of summons and other processes on parties and witnesses. Personal service of process is often difficult and there exists a tendency on the part of the litigant public to avoid service, which the dishonesty of process-servers often helps. Process-peons sometimes also make a return of personal service when none has been effected. Various remedies are suggested for effecting a quick and satisfactory service but none of them seems to be an improvement on the existing system. To enact that some mode of affixture should be taken as sufficient service would not improve matters. By affixing a process the party concerned may not get notice of the suit and he may remain in ignorance of it till probably execution is taken against him. In such cases (which may be many if service by affixture is generally permitted), on objection being taken, the *ex parte* decrees would have to be set aside and the cases reopened probably after a considerable lapse of time.

4. The suggestion to effect service by registered post is even less satisfactory. It only means the substitution of one agency for another of a certainly not better order and with the disadvantage that the courts would have no control over the serving agency and ordinarily would have no means of testing the truth of the return by examination of the postman who would not be available for examination and who, even if compelled to attend, could not be expected to remember the exact circumstances under which any particular registered letter was handed over to the party concerned. I do not think there would be any saving of time either; for,

the postman, who ordinarily would have so many letters to deliver, would not be in a position to make any search for each individual addressee who might be temporarily absent from his house. In the case of villages in the interior, the postman would visit the village only once or twice in a week and if the addressee could not be found on those occasions, the delivery of the letter would be considerably delayed. The court could not be sure when issuing a process by registered post as to when it would be returned after service, and consequently there would be great difficulty in fixing the dates of hearing. A registered letter would not ordinarily be delivered to any one other than the addressee ; but in the case of processes served through a court-peon they could be served on a relation of the party. A court-peon employed for the service of processes could make reasonable enquiries for the parties concerned and effect service, and the peon being under the immediate control of the court, his work could be easily checked and the man punished for any misconduct. The fact that the peon's report about the service of process could be verified by his examination on oath is a decided advantage. No doubt, some of these low-paid peons are open to corruption, but that evil cannot be remedied by merely substituting another kind of low-paid agency for the peons. I should consider the present system of serving processes does not require any material change ; but the presiding officers of courts should be directed to exercise stricter scrutiny over their process establishments.

5. It is a good suggestion to insist on the process peon reporting himself to the plaintiff's pleader who might be called upon to render all possible aid to the peon in effecting service. The process peon might be directed to keep a regular ' beat-book ' in which he should get the signature of the village-munsif or the ' karanam ', to show that he has really visited the village. Considerable discretion should also be given to the presiding judges to declare sufficiency of service after such examination of the service peon as may be thought necessary.

6. Honorary agencies for the service of processes should not be thought of in preference to the existing system, for reasons which are obvious. Registration of addresses also cannot be of much use. It is a good suggestion that in all interlocutory matters in suits in which parties are represented by pleaders, service on the latter should be deemed sufficient. This is already the practice in many courts.

7. The recording of lengthy depositions occupies a good deal of time, and greatly prolongs the trial of suits. Even in comparatively unimportant cases, numerous witnesses are examined and that at considerable length. Something might be done by courts to effect economy of time by disallowing irrelevant questions ; but there is no power given to the courts to refuse to examine witnesses tendered by the parties. The cross-examination of witnesses is not always confined to matters relevant to the case under investigation, for, some pleaders do not exercise any kind of discretion in the matter of choosing the questions to be put to witnesses but often act merely as the mouth-pieces of the parties or their agents who instruct them.

8. There would be a saving of time and the judge would be better able to intelligently follow the evidence if he is not to be constantly writing. If shorthand writers are employed to take down depositions at the dictation of the judge, trial of suits will be expedited and the judge will also be able to hear more suits in a day. I would suggest that a shorthand writer be employed in every court to take down depositions at the dictation of the judge. This would also enable the pleaders engaged in the case to know what exactly is the evidence recorded even before they get certified copies of the depositions. The complaint sometimes made that some answers given by witnesses are not correctly recorded or omitted would be obviated, for, the pleaders could at once call the attention of the judge to any such error or omission. The objection to employing shorthand writers would be on financial grounds. If the government is not prepared to incur any additional expenditure under this head, the parties may be called upon to pay a small fee (say *one anna* per 100 words) for the recording of evidence in cases in which they desire to have the evidence recorded. This would also check the examination of witnesses at unnecessary length. A qualified shorthand writer could besecured for Rs. 50 or Rs. 60 a month and the amount necessary to pay him could be col-

lected in the manner indicated above. The judge might be required to make a memorandum of the evidence in cases in which the parties do not desire to have the evidence recorded.

9. There should be more system in the work done in courts of original jurisdiction. A list of suits posted for each day should be prepared and put upon the notice board on the previous evening. It should be strictly understood that cases would be taken up in the order mentioned in the list and that the trial of a suit once taken up would go on *de die in diem* till completed. The rules provide for this already, but they are not often observed owing to various reasons, one of which lies in the fact that the number of disposals would be diminished by the trial of a big suit going on from day to day. Adjournments are also made to suit the convenience of practitioners. A piece-meal trial of a suit deprives the trial court of its advantages in the matter of appreciating oral evidence. If the system mentioned above be adhered to, parties and their pleaders would know when their cases would be taken up and would not ordinarily ask for adjournments.

10. I do not think that any change in the law of limitations is required to expedite suits and proceedings in execution. Many execution applications are put in simply to keep decrees alive. These applications are often necessitated because the judgment-debtors have no visible property against which the decree holder can proceed; and it would work hardship to curtail the right of keeping decrees alive for twelve years as is now done. In many cases, when execution is taken out by attachment and sale of property, claims are put forward by persons not bound by the decree which is the result of the peculiar family systems prevailing in this province. The investigation of claims thus made takes considerable time; but I do not see how legislation could stop it without working hardship on the litigants. I am not in favour of a rigid rule that claim petitions should be summarily decided on affidavits; for, orders passed on claim petitions without proper investigation might lead to injustice.

11. I am not in favour of the suggestion that in cases where legal representatives of a deceased party have to be impleaded, the onus should be thrown on the representative himself to come forward and request the court to place him on record. Whatever saving of time there may be by adopting the suggestion (I doubt if there would be any saving of time at all) the proposed modification of the law would work hardship. It is for the plaintiff who wishes to get a decree against the estate of a deceased person to see that that person's real representatives are brought on record. The rule now in force has the merit of good sense on its side.

12. Too frequent transfers of officers from one district to another should be avoided in the interest of quick disposal. An officer newly transferred to a district would take some time to get accustomed to the habits and manners of the people and consequently his work would be slow. An East Coast officer, for example, posted to a court in Malabar would feel very much like fish out of water for some time, though he has no doubt passed a departmental examination in Malayalam. If an officer, after serving for two or three years in a district is sent to another district where the conditions are totally different, his work must suffer both in quality and quantity.

13. The administration of justice by village courts is not satisfactory. It is not desirable to invest exclusive jurisdiction in village courts.

Dewan Bahadur M. KRISHNAN NAIR, M.L.C., Madras, called and examined on Friday, the 15th August 1924.

Mr. Radhakrishnaiya.—*Q.* Are you a member of the Legislative Council and a retired judge of Travancore?

A. Yes.

Q. You say in your memorandum that one of the causes of delay is that officers prefer simple suits to complicated suits and consequently the latter are adjourned from time to time. Does it happen very often in your experience ?

A. I was for about 16 years at the Bar and about four years a judge, not in this province but in Travancore, and I believe that it happens very often. The reason is that one has to satisfy the High Court with reference to the minimum which it has laid down.

Q. Does not the High Court insist upon older suits being taken up first ?

A. They are so many rules, but the subordinate judges and the munsifs look to their own interests.

Q. What do you suggest as a remedy for that evil ?

A. I have suggested that in my memorandum. The remedy is that quantity should not be the sole test. The quality should also be tested.

Q. You suggest that there must be an inflexible rule that older suits should be disposed of first ?

A. Yes, as far as possible.

Mr. Rao.—*Q.* you would make a difference between short causes and long causes, in the postings of cases.

A. You mean cases which will take a long time and short time.

Q. Petty contested suits, I mean.

A. They are not likely to be pending for a long time. The chances are that they will be disposed of soon.

Q. I quite see that. They will have to be taken in serial order.

A. I don't say in the order of rank with reference to the date of institution. That is not always possible.

Q. Therefore, you might classify suits as is done here on the Original Side, as short causes and long causes.

A. I think that will be one step further.

Q. Otherwise there will be this danger that a number of petty cases might lie hanging up for a long time on account of the earlier suits.

A. That is a danger certainly to be avoided.

Q. The first thing is to classify and post them accordingly.

A. Not by a rigid test.

Q. You may give a separate day for petty cases and other days for long contested cases.

A. I think it is a good suggestion.

Mr. Radhakrishnaiya.—*Q.* If, at the time of the settlement of issues, the judge looks into the pleadings himself, he can have a fair idea as to whether the suit will be a long one or short one.

A. Yes.

Q. If at that time he picks out the short causes and gives them special days in the week and on that day of the week heavy cases are not posted, will not all these short causes be disposed of quickly ?

A. I think so.

Q. Except to that extent you think preference should be given to old cases.

A. I think so.

Q. There is no reason why they should not be disposed of strictly in accordance with the age of the suit.

A. Yes.

Mr. Rao.—*Q.* You see the trial of a case lasts long, on account of the quantity of oral evidence to be recorded.

A. Sometimes. When there are a large number of documents, even apart from the oral evidence, it may take a long time.

Q. I mean in the generality of cases you find that a lot of oral evidence has to be recorded in big cases.

A. That is so.

Q. Can you suggest anything to minimise the necessity of recording so much oral evidence ?

Q. I think it will be very difficult; because, even though, as the law stands, the judge has got a discretion to disallow irrelevant questions or unnecessary questions, though ultimately the result will be the prolongation of the trial. With reference to the number of witnesses to be called, the law does not invest the courts with any power to restrict the number of witnesses. And, I also doubt whether it is desirable to invest the courts with such power.

Q. I was thinking of something else. Would you suggest substitution of documentary evidence for some things which are now proved by oral evidence ?

A. Even now when there is documentary evidence in support of any action, it is upon the documentary evidence that they place much reliance. They do not rely so much upon oral evidence.

Q. You see in the presidency towns all wills have to be in writing. In the mofussil an oral will may be made. I was thinking of something like that. Supposing you make it compulsory that all wills in the mofussil should be registered and you bring the mofussil practice into line with the presidency town practice, what do you think of that ?

A. I fully agree that wherever it is possible to have prepared evidence in preference to oral evidence it is certainly desirable to alter the law in such a manner. It may be done wherever it will not cause hardship to the parties and people and wherever it will not work injustice.

Q. You think that would minimise the quality of oral evidence.

A. Certainly.

Mr. Radhakrishnaiya.—*Q.* How far would you go into that matter? There is a suggestion for example that partitions of immovable property should be proved only by producing a registered document.

A. I think it will be of considerable help to introduce such a rule. I have also suggested that.

Q. Don't you think it will be a great hardship ?

A. If you enact a statute, in course of time the hardship will vanish. With reference to past transactions, it is another matter. The registration law has been introduced in the case of mortgages and sales.

Mr. Rao.—*Q.* Then, you favour a beginning to be made in this direction ?

A. Yes.

Mr. Justice Stuart.—*Q.* May I suggest to you that, if you are going to introduce compulsory registration in a large number of transactions, it follows as a corrollary that the facilities for registration should be considerably improved ?

A. Certainly.

Q. Is it not your experience that the position of an ordinary applicant in a registration office leaves a great deal to be desired ?

A. No. In our presidency those who go to the registrar are treated very civilly.

Q. Are they not kept waiting for a very long time ?

A. Sometimes; they can't help it.

Q. Sometimes they have to wait for 2 or 3 days.

A. No. They are not generally made to wait longer than a day and even that in exceptional cases. If, as you suggest, people would have to wait for 2 or 3 days I would prefer that in consideration of having documentary evidence.

Sir T. Desikachari.—In your province the documents are registered fairly expeditiously.

A. In the experience of those known to me, they are not made to wait at all.

Mr. Radhakrishnaiya.—The waiting time is the time taken up to copy the document in the register.

A. Yes.

Q. That can be obviated by asking it to be sent by registered post.

A. Yes. It is being done now.

Mr. Justice Stuart.—*Q.* Are the registration officers addicted to taking improper gratifications ?

A. I am afraid there is some loophole for that.

Q. There are provinces where no Indian can expect to get a document registered unless he pays at least a rupee beyond the legal fee—8 As. to the sub-registrar and 8 As. to the office.

A. It is not so bad as that. Of course there are exceptional cases.

Mr. V. Radhakrishnaiya.—*Q.* With regard to partitions, I don't think registration would be such a great hardship as the necessity of stamp for partition deeds. If registration for partition is made compulsory, you would suggest that the stamp duty should be considerably reduced.

A. As for the matter of that, not only in that but in all other matters the stamp duty should be made as low as possible.

Mr. Rao.—*Q.* Or, would you favour separate registration on these lines ? Suppose two brothers divide some landed property belonging to them. They may go to the sub-registrar and present an application through him to the tahsildar for separation of pattas in accordance with the division saying that such and such numbers have fallen to the share of each.

A. That would dispense with the need for paying stamp duty and a formal partition deed. It is a very good suggestion.

Mr. Radhakrishnaiya.—*Q.* With regard to the service of processes, you say you are not in favour of using registered post to a greater extent than it is used now.

A. There is a provision in the Civil Procedure Code, and practically to my knowledge, it is not used at all. In any case I am against the extension of that system.

Q. In any case you are against extension ? You think that the postman will not be better than the ordinary process-server so far as honesty is concerned ?

A. Yes. That is a substitution of one unsatisfactory method for another. The difference will be that the judges will have no control over these postmen.

Mr. Rao.—*Q.* So far as witnesses are concerned, would you entrust the summons to the vakil ?

A. I would not do that but I would certainly have their co-operation.

Q. On the Original Side of the High Court summonses are given to the vakil and he serves it through his clerk ?

A. That will not be satisfactory. I would rather have the present system. I may say, in all humility, that in spite of the best attempts by all the eminent men of the country, after all I do not know whether speedier justice is going to be had.

Mr. Justice Stuart.—*Q.* Do you not think that the condition of administration of justice in India is rather disgraceful? When a man comes up to claim partition of the family property to which he is entitled, he has to wait for six years before he gets a final decision ?

A. Certainly it is very desirable that there should be speedy justice.

Q. That is the figure in Madras if a case goes up to second appeal. This figure almost approaches a scandal.

A. That is certainly a too long time.

Sir T. Desikachari.—*Q.* Your idea is that nothing can be done to speed up justice except by appointing additional judges ? That is your suggestion ?

A. That is not merely a suggestion, but that is my opinion.

Q. Your opinion is that unless you appoint some additional judges to clear off the arrears, nothing can be done to speed up justice ?

A. Yes.

Mr. Justice Stuart.—*Q.* Your opinion is that with new institutions the present strength of the judiciary will not be able to clear off the arrears. The remedy would surely be to appoint temporary courts to clear off these arrears ?

A. But in the meantime new suits will be instituted.

Q. The temporary courts will simply dispose of the old cases ?

A. Yes.

Mr. Rao.—*Q.* The number of temporary courts must be equal to the number of permanent courts ?

A. It will be a pretty large number. Apart from cost it is a good suggestion.

Mr. Justice Stuart.—*Q.* Do you think that the question cost should be allowed to stand in the way ?

A. No, the question of cost should not be allowed to stand in the way. I agree with the opinion that the revenue derived from the judicial department should not be utilised by government for general purposes.

Mr. Radhakrishnaiya.—As a matter of fact government makes a profit out of it.

A. Yes.

Sir T. Desikachari.—You say that in spite of the best attempts speedy justice will not be done, but we have to make certain recommendations to the Government of India—how can it be possible. Can you give us some constructive suggestion as to how to minimise delay ? Men of your eminence and experience ought to tell us something which may help us in dealing with this subject.

A. I thank you for the compliment, but I am afraid I am not able to make any suggestion. As has been suggested the only possible remedy will be to have temporary courts.

Mr. Radhakrishnaiya.—You have made another suggestion in your memorandum that shorthand writers may be supplied to subordinate judges in order to speed up justice ?

A. Well, that is a suggestion which I thought would help judges in taking down evidence. At present they have to record evidence in long hand and it becomes mechanical with them and they get tired very soon.

Q. What guarantee will there be for the accuracy of the short-hand writer ?

A. I do not suggest that the short-hand writer should take down evidence himself, but the judge should dictate to him. There will be intellectual labour, but if the judge has a short-hand writer it will be less. I would suggest that the judge should dictate in the presence of the pleaders and the parties.

Q. When has the judge to sign it ?

A. According to the present system immediately after the examination is over.

Q. Why not to dispense with the signature altogether ?

A. I think signature is necessary.

Q. You can change the law. Because the judge has dictated the whole thing, therefore it must be taken as correct ?

A. We recently had a case of perjury. There was no signature and a particular gentleman was acquitted.

Q. Supposing the examination of a witness lasts for four or five hours on a particular day, will the short-hand writer be able to transcribe the whole soon ? Perhaps you see here that our short-hand writers take down notes for ten minutes

each ? How many short-hand writers will be required to take down what he dictated and then to transcribe it ?

A. I have not suggested that all evidence should be taken down in short ; if a person wants the evidence of a particular witness to be taken in short-hand then he shall have to pay the cost. I have suggested that additional charges may be levieb as copying fee. May I make a suggestion with reference to my experience in Travancore. With reference to second appeals, when I was there, I found that the decision on questions of facts by the first appellate court was final. I think it will be more satisfactory if a second appeal is provided against conflicting decisions on facts.

Mr. Justice Stuart.—We will note that. That is the opinion of many people. That is the case in Burma.

A. Yes.

Mr. J. C. ADAM, Public Prosecutor, Madras.

Written Statement.

During the past 7 years my work has been almost entirely on the criminal side. For 3 years I was Chief Presidency Magistrate in Madras and since then I have been public prosecutor for the presidency. Before 1917 I had a good deal of civil work in Madras and the mofussil.

In my opinion the delays in civil justice are principally due to the following causes, (1) the dilatoriness of the people in legal matters, (2) weakness of the judiciary in the matter of adjournments, (3) concentration of work in the hands of a few leaders. It is unnecessary to expatiate upon the first cause. It is well known and extremely difficult to cope with. As regards the second, I think a good deal of improvement could be made in two ways. Firstly, by impressing upon the subordinate judiciary the importance of declining to grant adjournments except upon the strongest grounds and secondly by insisting on short adjournments. I have heard it said that on the first two or three occasions upon which a suit is called the vakils frequently do not take the trouble to go to the court at all because they know that the case is not ready and sure to be adjourned. For this undesirable state of affairs the courts must bear most of the blame. Many a case would be ready if it is known that the munsif or subordinate judge will take it up when it is called and do something in connection with it. My experience as Chief Presidency Magistrate may perhaps be of value here. When I took over charge I found a large number of long pending cases. I came to the conclusion that this was due not so much to granting of adjournments as to the granting of too lengthy adjournments. Cases would be reposted a month or even six weeks ahead. By making and enforcing a rule that no adjournment longer than a fortnight would be granted in any case and that the usual adjournment would be one week, cases which previously took six months or more to try were disposed of within a couple of months. This had a very great effect in other directions, for a case feeds upon itself and the longer it is upon the file the bigger it seems to grow. Witnesses are brought in who were never dreamed of at the outset ; money is collected (and generally wasted) in keeping a case going ; and the result is usually no different from what it would have been if the case had been finished in a couple of weeks. I found that I was able to get the file in that court in order after about 3 or 4 months ; and after that time there were very few long pending cases. This considerably lightened both the work of the court, the prosecutor and the vakils. At the same time justice was promptly administered. Once a file gets into disorder it seems to remain in disorder. And this is due to posting. When a case has to be adjourned the diary is looked at and it is found that there is no free date for many weeks ahead and the case is posted to that distant date. It is only by a considerable amount of extra work in the first 2 or 3 months that the file can be got in order. After that if no long adjournments are granted there is no difficulty in keeping it in order.

The concentration of work in the hands of a few leaders of the Bar is undoubtedly the chief cause of delays. In this province leaders will not give their juniors a chance; they will strive by all means to get cases adjourned until they can come in instead of letting their juniors carry on. They are greatly afraid of offending their clients. This behaviour is quite natural. It can only be combated by the judiciary itself. The judiciary is far too weak in this direction. If it would decline to adjourn cases on such grounds delays would greatly decrease and at the same time the juniors would get a better chance. I believe that many munsifs are as wax in the hands of the leaders of the Bar. They are consumed with fear and apprehension and in consequence the business of their courts is regulated not by themselves but by the Bar in conjunction with the sheristadars and clerks.

Considerable delays are occasioned in the district courts by the slowness of the judges (especially the Indian judges) in trying criminal cases. I believe some of these hardly manage to do any civil work at all. Especially as regards their judgments they waste a deal of valuable time. It is my lot to read many of the judgments in these cases. I frequently find that judgments which could be well written in six paragraphs are expanded into sixty. Very often a great portion of them is merely recapitulation of the evidence. Sometimes it is recapitulated two or even three times. This must mean hours of unnecessary writing. In important cases the High Court passes over all this verbiage and gropes for the conclusions. The sessions judges are unaware that such methods of writing judgments mean waste of time and trouble. I am convinced that a great deal of time which could be devoted to civil work is lost over faulty methods of trying criminal cases.

As regards the questionnaire I have to say that as president of the Bar Association I presided over the deliberations of its council and am in general agreement with its conclusions. I will not therefore repeat what has been stated in its answers to the questionnaire. But I am strongly of opinion, speaking generally, that petty alterations in details of procedure will not be specially effective in reducing delays in civil justice. The main reasons for delay lie much deeper and in other directions as pointed out above.

I beg to make the following remarks:—

4. I do not think it necessary to alter the present method of recruitment of district munsifs, sub-judges and district judges. In my opinion they are, on the whole, of a very able body of men. Many are certainly weak but there is nothing to gain by merely changing the faces.

5. I do not consider that any special training is necessary for district munsifs especially as I have difficulty in determining how they could be specially trained.

7. Cases are so various that I do not consider that any standard of efficiency as regards the amount of work done can be prescribed.

9. I do not think any change in jurisdiction will lead to more speedy or less costly justice. In general I do not see how the transference of jurisdiction from a higher to a lower court can decrease in any way the time taken up.

18, 19, 20 and 21. In view of the fact that so many decrees are reversed in appeal I do not think that the right of appeal should be in any way curtailed.

33. In my opinion this suggestion would merely prolong the litigation. It would mean additional hearings for this purpose.

35. This does not appear to me to be possible without risk of injustice.

36. The small probative force of affidavits in this country renders this suggestion undesirable. Parties would have to be examined upon them in most cases.

37. This does not appear to me to be a practicable suggestion.

43, 45 and 46. I have already in my previous remarks referred to these matters.

65. I do not approve of this suggestion as I think it would lead to abuses.

81. I am very strongly of opinion that *benami* transactions should be discountenanced.

84. I do not think much more can be done to prevent champerty and maintenance in India. In England there has not been a case of barratry for many years. So also have actions for maintenance fallen into disuse. I find only two cases cited and those very special ones. The English Common Law dealing with these matters may be taken to be in force in India. I do not think an isolated action for maintenance or prosecution for barratry would have any appreciable effect upon delays in civil justice.

Mr. J. C. ADAM, Public Prosecutor, Madras, called and examined on Friday, the 15th August 1924.

Mr. Justice Stuart.—*Q.* You have been long in practice ?

A. Since 1905. Nearly 20 years.

Q. And till 7 years ago you were practising on the Original Side ?

A. Yes, a little and in the district courts.

Q. What is the difficulty here in Madras with regard to delays in courts ?

A. The difficulty here in Madras is that at present we have come to a stage in which it is almost impossible for the best munsif or the best subordinate judge to get to the end of the case for over a year.

Q. What is your opinion of the staff ?

A. I think so far as the staff is concerned we have got an excellent body of men.

Q. Are you satisfied with the methods ?

A. I am inclined to think that they are rather irregular in their hours. That is my experience. When you expect them at 11 o'clock they are not there till it is half past eleven.

Q. It may be that they are working in their own private rooms ?

A. Yes, but a good deal of time in the morning is thus wasted.

Q. In examining cases do you find there a tendency to adjourn cases and take up too many cases instead of taking up one contested case and getting on with it and doing nothing else. Do they take up one case every hour, hear a little and pass on to the next ?

A. My principal experience has been in the criminal courts. I believe the same will probably hold good for this also. I find it was like that when I first took charge of the presidency magistrate's place. I gave two days a week for short cases and three days for long ones. I made this clear and was able to clear off all arrears.

Sir T. Desikachari.—*Q.* You don't practie in the munsifs's courts or in subordinate courts ? Your experience is only confined to criminal courts ?

A. Yes. I have a certain amount of practice in district courts.

Mr. Justice Stuart.—*Q.* You know well of the way in which adjournments are granted ? Do they adjourn cases to a date on which everybody knows that the case will not be taken up ?

A. I think that is quite common. But I am very much against long adjournments.

Q. Is there any use in giving short adjournments ; if you adjourn for a short time and do not take up the case there is no advantage ?

A. For example if you have six adjournments each after a week it will be only 6 weeks. If you adjourn it for a month then for the six adjournments you will get 6 months. There are only two remedies. To have more courts and to have longer hours of work.

Q. In many parts of India I know that the subordinate judges and munsifs are working very long hours and we cannot expect them to work more considering the climatic conditions of this country.

A. Yes.

Q. Have you got experience of the quality of work of your subordinate judges ?

A. No. I have no experience. I used to have a good many second appeals. I went up to the mofussil for the civil original cases.

Q. You have had experience of champerty in Madras ? What we call champerty in England is not quite the same. I mean such cases as where the man who begins a suit is a man of straw and another man is paying all the expenses for him and takes the lion's share of the profit if any.

A. I think there is a good deal of it.

Q. Don't you think in a case of that sort it would be good if you could call for security for the actual costs in such cases ?

A. I think it would be a hardship and cause a good deal of hardship. The result of that will be that you will get numerous applications for transfer.

Q. Does not the evil call for a remedy ?

A. I can't say. I don't think that it is the right remedy. If it is clear that somebody has been maintaining the suit, then the law would deal with it.

Q. I will give you an instance. A leading banker and money lender bought up a speculative claim. The suit was filed in the name of a minor grandson aged 3. The Rajah who had to fight the suit had to spend two lacs of rupees on his costs. The costs awarded was a matter of Rs. 15,000. The nominal plaintiff is a bankrupt and the transferee was a baby. So he had to pay the costs himself. The real man's name never appeared. In such a case should not a rule be made that security for real costs must be given ?

A. The court will have to come to the conclusion.

Mr. Rao.— Suppose the man is brought on the record.

Mr. Justice Stuart.—*Q.* How you can bring him on the record ? His name never appears.

A. Let us take another case Let us take the case of a man who has been kept out of his property, and though he is practically a man of straw he comes into court and fights for a number of years.

Q. That is what I want to get at. Now let me know how many such cases have you come across in your experience.

A. I don't think I have come across any.

Q. I can say from my own experience of 30 years that I never came across such a case. Now let this go. I don't think we have any thing further to ask but we would like to hear if you have any proposal of your own to make.

A. I have sufficiently explained everything in my memorandum.

Q. I mean apart from that.

A. My opinion is that you cannot do away with the delays in civil justice until you have got enough courts to do the work. There must be an increase in the number of courts.

Q. Not permanently. As a matter of fact the number of disposals in this province is quite good in respect to institutions but arrears collect and it is impossible for a man to do his current work and clear off the arrears in addition. The judges do turn out a little more than the institutions.

A. I think if the courts be carefully watched from the headquarters and if there are arrears at any stage relief is given at once, there will be no difficulty.

A. J. KING, Esq., I.C.S., District Judge of North Arcot, Vellore.

Written Statement.

3. I would suggest two remedies :—

(*i*) Delay in a district court, or in the court of a subordinate judge who is also an assistant sessions judge is very often due to heavy sessions work.

Sessions work might be lightened (though, of course, not to any very great extent) by the elimination of what are popularly known as ' old offenders' cases. I do not see any valid reason why a case should be sent up to the sessions to be tried over again with a judge and jury merely because a sub magistrate is unable to impose a sufficiently heavy sentence. Why should he not be empowered to try the case himself, and submit it to the sessions (if the accused is found guilty) so that all that the sessions judge would have to do would be to award punishment.

(*ii*) The granting to all district munsifs at an earlier stage than at present the right to dictate judgments to shorthand writers.

6. I am not prepared to say that transfers are too frequent and I do not think it has much effect on the disposal of judicial work.

7. I cannot think of any practical proposal other than a statistical one. At the same time, I do not believe it is fair to place too much reliance on statistics. After all, the quality of the work done is the essential point and a judicial officer who is comparatively slow, but very thorough, may do better work and thus more substantial justice from the litigants' point of view, than one who finds no difficulty in maintaining or exceeding the required standard. If a standard is still to be kept, I would suggest that it should not apply indifferently to a whole province, but should be worked out for each court by going back over the statistics of the previous ten or fifteen years.

8. I am not sure whether an answer to this question would be required for a place like Vellore. We have only three courts here, all near one another, and any inconvenience caused by waiting for pleaders is trifling.

10. I would recommend as follows :—

No increase in original jurisdiction.

Small Cause—

	Rs.
(*i*) All Munsifs on appointment	100
(*ii*) After confirmation	200
(*iii*) After seven years' continuous service	300
(*iv*) After 10 years' service	400

12. (*a*) *Judicial.*—Please see my answer to question 13. I would also suggest that petitions under the Guardian and Wards and Lunacy Acts might be disposed of by subordinate judges and district munsifs.

Judicial work that may be delegated to the chief ministerial officer.

1. Reposting of 1st hearing suits and appeals.
2. Adjournments on the score of non-service.
3. Issue of execution notices.
4. Notices to legal representatives.
5. Returning plaints, execution petitions, etc., for defects.
6. Fixing dates in consultation with vakils, if necessary.
7. Calling for parties and noting their presence.

This is actually being done in this court with a subsequent formal initialling by the judge.

Administrative work that may be delegated to the chief ministerial officer.

1. Granting casual leave to all subordinates below Rs. 60.
2. Signing of all fair copies except to the Government and High Court.
3. Signing all returns and other routine papers.

I propose these three on general grounds of convenience. I cannot say that they occupy any undue proportion of my time in Vellore.

13. I think it would, apart from the natural desire of a litigant to have his case tried in as high a court as possible. I see no objection to the proposal. These matters are less complicated than many regular suits. Suits to which Government is a party are tried by subordinate courts. So there is no particular reason why land acquisition proceedings also should not be. Inasmuch, however, as they are often in the nature of appeals from the decisions of revenue divisional officers, I would restrict land acquisition proceedings to subordinate judges alone. Probate and succession certificate proceedings might be enquired into, by subordinate judges and district munsifs according to the value of the estate dealt with. I see no reason to select special individual officers for this work.

18. I think statistics prove that too many appeals are filed, for so many are wholly unsuccessful. But I am not prepared to say that the right to appeal should be taken away in any particular kind of case. It is an important safeguard against faulty decisions.

22. In this court the power has not been duly and systematically exercised. It is difficult to exercise it owing to the formal nature of the memorandum of appeal. The provisions of Order XLI, I (2) make it unnecessary to include anything in the nature of an argument in a memorandum. So, what happens is simply that every possible ground of appeal is entered in the memorandum and the lower court is said to have misappreciated all the evidence and misinterpreted all the documents. If some concise statements, however brief, were insisted upon, as to the reasons why any particular finding or interpretation or appreciation were wrong, it would be possible to discriminate between sound appeals and frivolous appeals from the appeal memoranda themselves.

28. I think it would. The postman is a man who knows all the villagers, and a defendant is not so likely to avoid him or tamper with him as he would do in the case of a process-server.

29. I think it would be a good rule.

31. I have no complaint to make with regard to the framing of issues, in cases which have come up to me on appeal.

35. No—so far as my experience goes.

36. I would be against it. It is only where there is any real contest that the matter assumes any importance. I do not think much of affidavits compared with the cross-examination of a witness.

37. Quite unnecessary, and difficult to work in practice without hardship. A court ought to be able to control the examination of a witness without any such hard and fast rule.

43. Very rarely are judgments too long. It is a dangerous practice to insist on short judgments. They *must* deal with all important points, in order to be of assistance to appellate courts. Dictating would shorten the time taken in preparing a judgment.

45. My own practice, following that of my predecessors, is to leave the office to fix the dates of cases until they are ready for hearing. After that, if any further adjournments are necessary I usually fix them myself. I think this practice is an excellent one. The Bar is quite satisfied with it, and it saves my own time considerably. Of course, it is difficult so to post cases that enough work and just enough work is posted for each day, but that would be so, whoever were to do the work of posting.

54. I think this is a good suggestion.

55 I think this also might be done.

56. I would prefer the last suggestion that a decree-holder be allowed to execute the decree at any time he finds it convenient. I would not curtail the period to six years. I do not like (*b*). (*c*) is a good suggestion if the last suggestion in the question is not adopted. The general reason for these answers is my belief that

execution always tends to be very troublesome for the decree-holder and I would do nothing to increase his obligations.

58. An excellent suggestion, theoretically, but I think it a little too advanced for the average litigant.

72. (*i*) Yes, unless the defendant is *ex parte*.

76 and 77. I would be in favour of this.

82. I do not think court-fees should be enhanced any further.

83 Yes. It is necessary as a safeguard. Mortgage documents are sued upon after a much longer interval from their execution than sale-deeds and leases.

In submitting these answers, I would like to say that they are necessarily based upon a very limited experience. My total service as acting district judge is less than a year. I have had no practical training in subordinate courts, nor have I yet had any opportunity of inspecting one.

Mr. A. J. KING, I. C. S., District Judge, North Arcot, called and examined on Friday, the 15th August 1924.

Mr. Justice Stuart.—*Q.* I think you have not been a judge for more than a year ?

A. Yes.

Q. Do you find that the criminal work is getting heavier in Madras than it was five years before ?

A. I don't think so.

Q. How many sessions cases have you to do ?

A. I devote ten days in a month to my sessions cases.

Q. Do you mean to say that half of your working days are spent in doing sessions cases ?

A. Yes.

Sir T. Desikachari.—*Q.* Do you do any original work ?

A. Very little.

Q. You do all appeals ?

A. Yes.

Mr. Justice Stuart.—*Q.* Before you became a judge had you had any opportunity of studying civil law ?

A. I had an opportunity in England. I passed the examination for the Bar.

Q. Did you read in chambers ?

A. No.

Q. I find that in 1922 the judge at Vellore disposed of quite a good number of cases. I find he disposed of nearly 300 appeals. Is the same number disposed by you ?

A. I have done about 110 so far.

Q. In 1922 his disposal of criminal appeals was 56 cases and the same number this year. Are you also doing so many ?

A. Slightly less.

Q. Criminal appeals are very very few ?

A. Yes.

Q. Have you tried any original suit ?

A. I have not tried a single one.

Sir T. Desikachari.—*Q.* Why don't you withdraw some of the cases from the subordinate judge and do them yourself ? Most of the important work ought generally to be done by the district judge himself.

A. The main reason is that I have been carrying on more or less on the lines of my predecessor.

Mr. Justice Stuart.—Q. If you relieve the subordinate judge of some of his original work he may take some of your appeals.

A. My subordinate judge is only a temporary one.

Q. Is your district one of the districts where the theory is that the district judge is supposed to do every thing himself ? I mean to say that he should do the work of the subordinate judge as well as his own. Is that the theory ?

A. My district is too big for that and a dispute is going on between my district and the adjoining district as to who should have the permanent man.

Q. In 1922 was there no subordinate judge at Cuddalore or Vellore.

A. No, there was one at Vellore.

Sir T. Desikachari.—Q. Do you find time for inspection of your courts ?

A. I hope to be able to inspect my courts. My predecessor has been doing inspection.

Mr. Justice Stuart.—Q. You are very much in favour of handing over all the office work to an officer other than the judge. The suggestion is very good but do you think that it will be possible to have enough work for that officer ?

A. He would not have enough work.

Q. If he takes uncontested cases in addition ?

A. I think the district judge and the subordinate judges get on with their uncontested work fairly well.

Q. Your work is not really out of hand ?

A. No.

Q. Do you not think that it would be a good thing if all the dates were fixed by the judges themselves and not by the clerks ?

A. The dates are shown to me.

Q. Then it is all right. What I find is that dates are fixed by the clerk and the judge does not know how much work is fixed for that date ?

A. I always know that.

Q. Do you find that you can easily take up your civil appeals fixed for the day. or have you to adjourn them ?

A. More appeals are actually fixed than can be got through.

Sir T. Desikachari.—Q. Do you fix any under order XLI, rule 11 ?

A. I have not fixed any yet.

Mr. Justice Stuart.—Q. Is there any particular object in fixing work which everybody understands will not be taken up ?

A. Just to keep a check.

Q. A man knows that he cannot get through more than four of five appeals in a day but he fixes eleven. The Bar knows perfectly well that nothing after number five will usually be taken up . It happens that two of them break down and number six is reached. The pleader is called out ; is'nt it his first remark "I have not read the brief as nobody thought that you were going to take it up ?"

A. They do prepare a little further down the list.

Q. Put a margin by all means but not too great a margin and give the man at the bottom of the list priority on the next day.

Sir T. Desikachari.—Before you became a district judge have you had any experience with regard to panchayat courts ?

A. No.

Q. Were there any panchayat courts during the time you were a collector ?

A. I was a district magistrate and then I became a district judge.

Dr. DeSouza.—Q. I believe you are one of the few civilians who have volunteered for the judiciary ?

A. I do not know.

Q. As a general rule, in this presidency, I understand, the practice is that a Civilian after he has been a collector or acting collector, is put into the judiciary at once and appointed a district judge ?

A. I myself acted as a collector for four months.

Q. But no preliminary training of any kind for trying original suits is given to Civilian officers ?

A. There was at one time. I was not given any.

Q. Was that system long in force ?

A. No.

Q. I believe it was tried in one or two cases and then given up ?

A. Yes.

Q. When you were made to act as a district judge and to hear appeals from the district munsifs and subordinate judges, did you find it rather difficult to follow the procedure of the lower court ?

A. Yes. I will prescribe some training.

Q. You felt that not only in the interests of the public and the Bar, but also in your own interests, that training in original civil work should have been given ?

A. Yes.

Q. Not having been in charge of munsifs courts, naturally you felt some difficulty in carrying out inspections ? You are naturally not in a position to say whether a munsif or a subordinate judge disposes of a suit in the best way and whether he tries suits *de die in diem*, and whether other rules of the procedure are complied with ?

A. I think I can manage to do that, though not so well as I would have done if I were trained.

Q. The kind of inspection I mean is not to see whether for instance the stamps are properly punched but to see whether the preliminary steps for the preparation of a suit were all properly taken and whether the munsif tackles the suit from the very beginning in the proper way. That is the sort of inspection, I mean. This sort of inspection is now done by the clerks of the district judges, and munsifs and subordinate judges object to their work being inspected by a man in the position of a clerk. Do you think you will be able to do that sort of inspection yourself ?

A. I think I should be able to do that.

Q. Without having ever tried any original suit, would you not find it rather difficult ? I mean there are tricks of the trade in trying suits as well as in any other trade. The object of the inspection is to see that the tricks of the trade are not too frequently resorted to. I am not speaking with regard to you personally. I am speaking about the impossibility of an officer deputed to inspect courts without any preliminary preparation to do the inspection satisfactorily. In several other provinces so far as I am aware, the district judge, before he is appointed as such, is given at least 18 months' preliminary training in the trial of original suits, whether as a munsif or as a sub-judge. If such a system is introduced here, would it in your opinion be very helpful to the officer himself and would it not be more fair to the parties and litigants ?

A. Yes. I think so.

The Hon'ble Mr. C. P. RAMASWAMI AYYAR, Member, Executive Council, called and examined on Friday, the 15th August 1924.

(No written statement received.)

Mr. Justice Stuart.—I understand that you prefer to give evidence in public and I don't want to put any questions. We only want to have your views as to

how far the evil of delay exists in civil courts in this Presidency and what in your opinion is the best method of dealing with it. We shall be very much obliged if you would give us your opinion.

Hon'ble Mr. C. P. Ramaswami Ayyar.—I don't mind giving evidence in public or being asked questions, though I understand that in other Provinces and Presidencies the method generally adopted has been a kind of conference in camera

Q. I thought you said you preferred to give evidence in public.

A. I did. I preferred it for this reason that the Madras Government has for some time been devoting its attention to this very evil and has been attempting certain solutions. We hope that a public discussion of this matter might be of advantage from an all-India point of view and might in view of any questions that might fall from any members of the Committee, enable me to clarify my mind and to alter the policy or effect any changes in the way in which we are approaching the problem in this Government. It is in that light that I welcomed public criticism in a matter of this kind in which the public are intensely interested. In view of all this I chose to appear in public.

The first point that I desire to place before this Committee is that in the main I shall speak in a personal capacity and in cases in which the Government have taken action I shall speak for the Government in its corporate capacity. Speaking personally, I feel there is a great deal of avoidable delay in the case of civil proceedings. And, what is more, in addition to delay in proceedings up to decree there is a great deal of avoidable delay in execution proceedings and in the matter of the litigant being able to realise the fruits of the decrees. To a certain extent the evil, so far as execution proceedings are concerned, may be attributed to the want of control over ministerial establishments and periodical scrutiny of their work, but, I think that it is due also to the manner in which stay of execution is granted, the manner in which transfer of proceedings at the last stage sometimes takes place. That is so far as execution is concerned; and right through both generally up to the stage of the decree and afterwards, delay in the service of processes helps in no small degree to augment the general dilatoriness of the proceedings. As to suits themselves, I hold strongly the view that courts should realise and be made to act on the belief that the first hearing is not a mere formal affair, that the scrutiny of pleadings and bringing them into proper shape must be real and the settlement of issues must be not too much a matter of formula but a matter of clarifying the real issues before the court. If that procedure is adopted more thoroughly, a great deal of delay may be avoided. From personal experience as a member of the Bar especially in heavy mofussil litigation I am aware that what most often happens is that the leading counsel on both sides in Madras agree upon issues practically raising one issue on every paragraph in the plaint and in the written statement. They do not desire to give up any possible contention which may afterwards have some chance of success when the trial actually comes on, with the result that in heavy cases it not infrequently happens that there are 20 or 30 or 40 issues settled. The trial naturally is very much delayed on that account. The munsif or subordinate judge is also in this unfortunate predicament that he is too often judged by numerical standards of disposal which are good so far as they go but are not decisive factors, and if he takes time over the first hearing he apprehends and has got an uneasy feeling that he might have less time to devote to actual final disposal and might not be able to show much outturn in the form of statistics. So, every thing conspires to make the first hearing and the preliminary portions of a trial a matter of form which they ought not to be. I consider that if, as I said, the examination of parties at an early stage of a case and the scrutiny of pleadings and the raising of issues and the settlement of certain points at the first hearing be given the importance which they deserve, much may be done to minimise the evil. The practice should be encouraged of insisting on admissions and penalising the parties who do not admit things which are admitted or proved afterwards after incurring great cost, by summoning witnesses. I think if this practice is followed a great simplification and avoidance of delay will be the result.

Sir T. Desikachari.—*Q.* Would you like to have the examination of the plaintiff and the defendant at that stage ?

A. In certain cases. I think interrogation of the pleaders as to what points are likely to be controversial and what points are worth fighting about, free utilisation of the system of discovery and the system of interrogatories might to a certain extent minimise delay.

Mr. Justice Stuart.—*Q.* I understand you to say that the judge, while ready to accept suggestions from the counsel, should apply his mind intelligently to the nature of the case and do his best to induce the parties to utilise the power of discovery and admission in an intelligent manner. Do you think that is done at present ?

A. I may say that discovery is a matter of course on the Original Side of the High Court so that the parties come to trial prepared with the knowledge of each other's documents. In the districts it is very rarely the case. I think in the districts and in the metropolitan courts the system of admission is much less used than it ought to be, that is so far as the earlier stages are concerned.

Then I consider the system of appeals against interlocutory orders is one which deserves very careful consideration. I am not at all in favour of curtailing the rights of appeal in cases where there is something substantial, but there are interlocutory proceedings which are prolonged from court to court to an extent which is very embarrassing and which really tends to the delay in the trial of the suit itself.

Q. Do you think these applications are admitted rather too freely ?

A. Yes that is my personal view.

Q. And do you consider that it should be recognised that when they are admitted their hearing should be expedited much more than it is done now ?

A. Yes.

Q. Although I have very little experience of the work in Madras, yet I find that it is by no means uncommon for appeals against interlocutory orders to remain in the High Court for one year ?

A. It depends largely upon the personality of the judges. There are some judges who always make it a point to expedite the hearing of interlocutory matters. That is a matter of personal equation, as it necessarily must be. At the same time I concede that in certain cases interlocutory matters may really dispose of the suit itself. A receivership application, for instance incidentally disposes of many matters which will have the effect of curtailing the final duration of the suit.

Q. But still there is no reason why that should not be decided as soon as possible ?

A. None. I think it is necessary to differentiate between classes of interlocutory matters which are really significant, important or decisive and classes of interlocutory matters which are initiated more for the purpose of gaining time and for delaying proceedings.

Q. I may give you an instance from Bellary. There was a suit on a registered bond about which there was no real difficulty. The execution was admitted by the executant but certain parties came into court and said that they were joint with the plaintiff and demanded to be joined so that they might obtain some benefit. They were joined as defendants though they were fighting against the other defendants. The matter as to the joining of these people went to the High Court, on an appeal. The High Court upheld the order about joining them as parties but the matter did not come back for one year and the suit which was filed in September 1917 was decided in 1921 after about four years. Well that was bad enough. I want to know whether that sort of thing is common ? Do you not think that a case like that should be given priority ? The court below could not go on with the case. The High Court could reject it or do any thing it liked but it should not have taken one year.

A. I may say that in the High Court the Hon'ble the Chief Justice Schwabe naugurated some such system. He asked the registrar to make a list of interlocu-

tory appeals and wanted them to be posted first, and that system helped in curtailing the duration of these interlocutory matters.

Q. You see what happened in this particular case. I think the suit would have been decided very soon, had there been no appeal in the High Court. The case was instituted in September 1917 on a registered bond. There was not the slightest doubt as to the fact that whatever might happen the defendant would have to pay some thing. He admitted execution and receipt of consideration. It took five years to decide this simple case. There was no legal difficulty about the matter.

A. At the same time, I think, the first judge could have avoided the delay by giving a decree for the amount admitted.

Q. But that was not the question, the question was about the joining of the parties that came late ?

A. Supposing the plaintiff had made an application that the amount admitted should remain in court pending the decision of the question in the High Court.

Mr. Justice Stuart.—Q. What seems to me is that in England a matter like this could be disposed of in six months.

A. The difficulty of the matter arises because of the narrowness of outlook. It may be that in England there is a higher state of professional etiquette and they easily agree on certain points. I don't want to make any hard and fast rule as to the clause that gives the right of appeal.

Q. I shall give you an instance from another province. A man desired to be examined on commission. The judge desired that he should be examined on commission. An appeal was at once made to the High Court. They sent a stay order after 15 days and the case was pending for nearly one year in the High Court. Don't you think that such a thing should be put an end to ? The order directing the man to be examined on commission was certainly not illegal.

A. I think that crystallises one aspect of the matter I was thinking of.

Q. My question was, was he to be examined in the place where he lived or was he to be brought 250 miles to be examined ?

A. I would simply say that in such a case there need be no further appeal.

Sir T. Desikachari.—Q. If half a dozen judges take different views in one court where is the surprise that such a thing should happen in different High Courts. Your view is that appeals against interlocutory orders must remain, but the disposal of these must be hastened ?

A. Yes, and an examination of the classes in which you allow appeals must take place so as to eliminate some of these futile appeals. As regards the congestion in courts, so far as Madras is concerned steps have either already been taken or are going to be taken up by investing courts other than district courts with powers, in the matter of succession certificate proceedings, land acquisition, insolvency and things of that sort. In many districts it so happens that the sessions judge's work is so heavy and the judge is also untrained in the civil law and feels some embarrassment in approaching these problems and the subordinate judge might be able to take up some classes of this litigation. What we really propose to do is, whenever certain courts got congested with work and the arrears increase to an enormous extent, we shall not have temporary courts established which meant an establishment, building and so on. Our idea now is to start a system by which we can have a certain number of judges as reserve and these are to be sent out to various courts where the work is congested. They will relieve the work there and pass on to the next place, so that this does not increase the number of subordinate judges to any considerable extent and yet we can clear off the arrears by giving assistance wherever required. As a matter of fact even now there are some who have very little work and others who have very hard work and hardly any leisure. The Madras council proposes to legislate on those lines.

Mr. Justice Stuart.—Q. Do you wish to follow just the same practice that is followed in other provinces ?

A. Yes, as in the U. P.

Q. There are certain courts on the other hand in which the work has got completely out of control. There I send out an officer either a subordinate judge or a munsif and these are not expected to do anything else but clear off arrears. Is that what you propose to do ?

A. Yes. With regard to subordinate judges and munsifs.

Dr. DeSouza. Q. You say you have attempted to reduce the congestion in the district courts by sending land accquisition cases and succession certificate proceedings, to subordinate judges. Now I find that from the evidence given before us that sessions judges in this presidency have not sessions work for more than 10 to 15 days except in two or three district like Coimbatore, Tinnevelly, Krishna, and to a certain extent in Godavari also ?

A. Yes.

Q. Taking your description I find that the amount of criminal work done by them is comparatively low. It does not take more than 10 days a month ?

A. My point of view is this. So far as district and sessions judges who are recruited from the I.C.S. are concerned, when complicated civil cases arise they feel a lot of difficulty. And you will see that in the matter of land acquisition and succession certificate proceedings and insolvency proceedings they are of a very difficult nature, dealing often with complex points of law. I may say at once that if an I.C.S. officer is to get into judicial line he ought to be able to do well. He ought to do as well as the subordinate judges in the civil law. Otherwise there is no justification for his being there. I hold the view very strongly that for political reasons it is not right that any European servant of the Crown should be considered to be or stated to be inferior by reason of his training, and for that reason I would strongly advocate a legal training as a *sine qua non.*

Mr. Justice Stuart.—Q. Of course the difficulty in the abolition of the Civilian judge is that he is an expert on one side—on criminal law and his colleague from the judicial service cannot have that experience, but at the same time it is very essential that a man should not hear appeals and decide insolvency cases or suits under section 92 which are complex and difficult in this presidency unless he feels at home in them and that can only be done with some preliminary training.

A. I quite agree.

Dr. DeSouza.—Q. While we are on the subject, may I ask you whether it was some time the practice of the Madras Government to force into the judicial line men whom they considered to be failures and that that practice is going to be revived in the case of men with 20 to 22 years' service. At that stage it is impossible for such men to grasp new work.

A. Let me put this in this way and I hope you will pardon my saying this. There are a certain number of Indian Civilians recruited and they have to be provided for. Suppose one makes a hash on the executive side, then what are you going to do with him. You cannot dismiss him and you must give some kind of work to him. He may do fairly well on the judicial side. The risks are equal in both the lines—executive and judicial—and you have to take one risk or the other.

Q. But you would not make the judicial department the *pinjra pole* of the services.

A. But there is also a risk if we make a *pinjra pole* of the other side.

Sir T. Desikachari.—Q. Perhaps we might insist upon their training.

A. That is just it.

Mr. Justice Stuart.—Q. We are endeavouring in the U. P. to give training after about five years and to give it in every branch.

A. Well, no doubt there have been one or two cases where the persons who had been comparative failures in the executive line have been put into the judicial line, but we have just recently considered the case of a brilliant man whose prospects in the executive line were quite good and he wanted to go to the judicial department himself and we are sure he will be a good judge.

Q. I would not suggest what the form of training should be. It is entirely a matter for the Government to decide. But the correct solution would be to have the Civilians trained in the seventh or eighth year of their service.

A. I expect that the young Civilians when they are recruited will themselves prefer to be trained because the prize posts in the executive line are less now as compared with the judicial department. So long as the one-third of the High Court judges have to be from the civilian element we will have four posts for them whereas the number of Executive Council members is only two and therefore the prize appointments on the executive line are less than the appointments in the judicial line.

Q. I would not make any suggestion as to the nature of the training but I may express an opinion. I do not know whether it is of any value or not. Some Government Advocates are complaining bitterly as to the amount of spade work that has to be done in connection with the civil work and a suggestion was made that some young Civilians should be trained in their chambers. What is your view on that ?

A. A suggestion was made at one time that the junior Civilians might be asked to work in the chamber of some senior practitioner but for the reasons which I cannot explain in public that idea was not put into operation.

Dr. DeSouza.—*Q.* May I ask whether it is the practice of the Madras Government to consult the High Court as regards the postings of the district judges or whether a junior officer is posted to a heavy station and a senior one to a light station ?

A. All postings are generally made in consultation with the High Court.

Mr. Justice Stuart.—We should like to hear some more points.

Hon. Mr. C. P. Ramaswami Ayyar.—*A.* There is a very strong argument that I have seen advanced in the course of the evidence given before this Committee, as to the system of recruitment and promotion in the case of subordinate judges and district judges. There I hold very strong views and to a certain extent, as a member of the Government, I have been trying to put these views into practice. There is a feeling that delay in work is sometimes due to men becoming stale and that brilliant men, who are not actually senior in the ranks, are not given their due chance. Seniority is one of the factors but not necessarily a predominant factor in the matter of promotion. This is a matter on which I feel very strongly and I have heard a good deal of evidence given before the Committee, but I think that I should not yet deliver myself of any remarks on the matter. Is there any particular point on which the members of the Committee would like to have my opinion ?

Q. As to recruitment as munsifs, we are given to understand that certain names were suggested by the district judges and the High Court judges. A list was prepared, but that list was left in the hands of the English Judge, who filled up the vacancies. Do you consider that to be a correct method ?

A. I cannot say, because I myself have not actually been on the High Court Bench.

Q. And it seemed to us that we might make a possible improvement if there was little bit more personal touch in the matter. In the United Provinces we tried as far as possible to give people personal interviews with a committee of three judges and we gave marks for their general intelligence, character, etc. ?

A. May I say what I have in my mind. Subject to the limitations of the mutual relations between the Government and the High Court, I should like to see the following system put into practice. Each of the twelve judges has got two or three districts placed in his charge from the administrative point of view. I am working up to a system under which each judge would be responsible for the judicial administration of a group of districts, acting as far as possible in matters of cardinal policy in touch with his colleagues, but primarily he will be responsible to the public and the government, and thus when the subject of law is transferred to Ministers' control, or even before, the High Court will be in sole charge of

the patronage of the judicial department, or to a long extent either by itself or through a Public Services Commission. The best way of working that system would be by making a beginning by allotting districts for inspection.

Sir T. Desikachari.—*Q.* The impression that is left in the minds of the members of the Committee by the evidence given before it—whether that evidence was based upon actual complaints or actual facts or not—is that it is better to have some sort of competitive examination, something that will eliminate patronage and give place to merit.

A. I may say that any kind of choice that you may adopt is likely to be attacked, but the system which I have adumbrated is likely to solve the problem better than the competitive examination. A mere success in the competitive examination would hardly be a sufficient test of what may be called judicial efficiency. It is, I think fairly well known that a man who has taken honours in the law examination has not always been a successful lawyer. The actual conduct of a certain number of cases in the presence of a man who has got the means of judging his capacity—especially if the High Court judge inspects the locality and sees these people conducting cases—that will be a better test.

Q. At present the system is that failures are the recipients of patronage.

A. I think that it would be uncharitable to put it in that way. Still I would say that certain obvious failures have become munsifs and on the other hand those who should have been the leaders of the Bar have got into our judiciary. But it is always a gamble. There is no doubt of it. The way in which I seek to put my views into practice is by super-imposing upon the judgment of the subordinate judge the judgment of the High Court judge, in administrative charge, after constant supervision of the districts concerned.

Mr. Justice Stuart.—*Q.* Then how are you going to make the selection? I will give you a practical point. Last year, in the United provinces, we had over one hundred candidates and owing to an increase in our personnel we had about eighteen vacancies to fill. A committee sat for three days and we interviewed 54 candidates and selected 18, who were thought best. With regard to the question of patronage it will be rather interesting for the public to know that twelve of the men selected were men of whose existence we had never heard before. If you like to super-add the competitive examination to an interview I should have no objection, but I would insist upon having interviews.

A. It has been the case—I do not say very often—that a person whose experience has consisted solely of strolling in the corridors has been appointed. If the judge in charge of these matters were also in a position to find out how many cases he has appeared in, and what he has done in these cases, he could find out what minimum efficiency he has got.

Now, I am quite alive to the importance of personal interviews on the part of those who are responsible for the final appointment but as a condition preliminary to the people coming to the test there ought to be some kind of minimum experience at the Bar. I don't mean to say that a person ought to have made a large income at the Bar or anything of the kind. He must have had a certain number of cases. He must not be chosen on grounds extraneous to judicial fitness—grounds which I don't want to dilate upon. I have next to state that much of the appeal work going up to district judges from subordinate judges is misplaced in the sense that it is an appeal in the present state of the training of the district and sessions judges, from the more trained to the less trained, and I would on the whole try to avoid that result by the judicial training of the judges to which I have adverted. That is all what I have to say on the mofussil litigation.

Q. Would you be in favour of giving some slight training to a munsif, on his first appointment, in office matters and the like? I think you will agree with me that very few members of the Bar know very much about the working of the office from the inside. What do you say to giving him a training for 2 or 3 months so that he can have a grip of what he is doing and know the tricks of the execution clerk and the tricks of the process server?

A. The tricks of the execution clerk are so complicated and so devious that this 2 months training is absolutely insufficient.

Q. My idea is this. You can get a really good man retired from service. Let him hold a class for about 2 months and have these young munsifs under him. He can tell them more in 2 months than they could themselves learn in 5 years.

Sir T. Desikachari.—If the munsifs are properly selected, I think, they will know a great deal of the tricks about the execution clerks, if they had any practice worth the name.

A. If my scheme is to be worked out, these young men who have been chosen as munsifs would be working under the leading men in the mofussil and they mainly would be in charge of the execution work. They will probably be given legal representative petitions and execution petitions to deal with and they would come into contract with these clerks and know their ways.

Q. If I may be permitted, I should like to know what you have to say with regard to the raising of the small cause jurisdiction under the Provincial Small Cause Courts Act and the resultant effects ?

A. The policy of the government has been fairly clear. We have been endeavouring to increase the small cause jurisdiction. With that particular object in view, we have gone a great way already. Now, I may come to the High Court and its Appellate Side. I may at once say that a trained ministerial establishment, trained in legal and judicial work, is a *sine qua non* to the reduction of arrears in the High Court. I consider that the High Court registrar and the staff appertaining to the registrar must be composed of trained men—men trained in the provincial civil service or at the Bar and who know where the shoe pinches. In the matter of translation and printing and in the matter of various other things which are preliminary to cases being prepared and being brought up in proper shape before the High Court, if that ministerial establishment were given fairly large discretion and powers which could safely be given them only if they were lawyers with practical experience of every kind of work, half the delay will be avoided. The amount of entirely needless and avoidable translation and printing that takes place and the consequent delay in the hearing of appeals is appalling and from personal experience I can say that if, to the ministerial establishment of the High Court powers of supervision and scrutiny in the matter were given, and if the staff consists of people who are able to know what the cases involved, and what the issues were directed to, a great deal of delay can be avoided. At the present moment, I for one, from that point of view, would strongly advocate that the registrarship and the deputy registrarship of the High Court should be prizes open to the Provincial Civil Service—to men who have had considerable experience in the actual handling of heavy mofussil litigation and execution work and who would therefore be in a position to bring their knowledge to bear on the preparation of these records in the High Court.

Mr. Justice Sutuart.—*Q.* Would you be in favour of undertaking the printing of paper books ? Don't you think it will be money well spent to put a competent man on a reasonable salary to do that work ?

A. In fact I go further and say that the men on the staff of the High Court ought to treat that as their first duty. I consider that there is no duty more important that can be cast upon the registrar of the High Court than to see that the cases are presented in an elegant form, and not as a cumbrous mass of partly irrelevant matter.

Q. Sometimes only one entry is in question and the whole thing is translated.

A. Yes.

Mr. Rao.—*Q.* Postings should be regulated ?

A. Yes. Postings are technically in the hands of the Chief Justice. I remember a period when two prominent judges of this High Court tried for the purpose of easing the strain of the work—alternately first appeals, second appeals and miscellaneous appeals. After doing some first appeals then they took up second

appeals and so on because they felt a great strain trying first appeals one after another. To go back to the preparation of the record my point is that one feature of avoidable delay in the matter of disposal of appeals is with regard to the absolutely irregular system of translating and printing of records, and this is a matter which is entirely or ought to be entirely within the scope of the work of the ministerial establishment. That is at present no body's business. So far as lawyers are concerned they do not know what things will turn up and they risk printing everything, and very likely the legal practitioner has hardly the time to look after these things.

Q. Have you seen a case like this in which the question involved was a point of limitation and the book was of 600 pages ?

A. Yes. I have seen such things.

Q. As we are on this subject, I would like to have your opinion about the suggestion of mofussil divisional benches. Do you think that it is practicable ?

A. I should not think so.

Q. Why not ?

A. The point is this. The litigant is very anxious to get any important case decided by the highest court. The suggestion has often been made that two subordinate judges may dispose of, sitting as a bench, appeals from district munsifs only under Rs. 1,000. So far as I can judge of the temperament of litigants, I do not think that this suggestion will be welcomed.

Q. Of course you see that there will be a great saving of time if it is adopted ?

A. There are certain advantages.

Q. I find that it is practically unknown in Madras for an appeal to be heard, at present, by a district judge or a subordinate judge, in less than a year. These benches will do nothing else and would, I think, be able to dispose of appeals under Rs. 1,000 in three months ?

A. Look at the increase in numbers.

Q. Do you mean numbers of benches ?

A. Numbers of judges.

Q. By doing so you will be saving a lot of time of the district judge.

A. A judge who is adequately trained in the civil law will dispose of these appeals quickly.

Q. He can dispose them of quickly but he has got a lot of other things to do.

A. I am coming to that. There is a lot of miscellaneous work. It may be said that a second appeal itself is a luxury, but it is one of two things, either it is a mere trifling affair or on the other hand it is a test case.

Q. We will leave it to the common sense of the judges concerned. In a case where there is a really very difficult point of law the judges will have the power to state a case to the High Court. I do not suggest that the bench will decide all cases, it will state a case to the High Court when there is a difficult point of law.

A. I may say that there is a system of guillotining by the High Court at the admission stage.

Q. You are referring to Order 41, rule 11. In all these cases, first of all there is delay in the district munsif's court, then in the subordinate judge's court and then the matter remains pending in the High Court for two years. Do you not think then that these matters can be decided by these Benches ?

A. There may be delay in these Benches also.

Sir T. Desikachari.—*Q.* Would you limit the right of second appeal and say that there should be no second appeal if the case is below Rs. 1,000 in value ?

A. Pecuniary limitations are somewhat illusory because of the system of land valuation. So long as you have this system of land valuation under the court fees Act Rs. 0 may mean anything in actual value. Further a case may be a test case.

Mr. Justice Stuart.—*Q.* At any rate I may take it that your view is that these Benches will not be a success ?

A. They will not be welcomed.

Sir T. Desikachari.—*Q.* How would you limit second appeals . Would you say that a man who files a second appeal against two concurrent findings should deposit the decretal amount ?

A. I have not bestowed much attention on that aspect of the matter, but I consider that some such procedure as obtains in England will do. In England a certain class of appeals are not allowed unless the counsel certifies that there is a substantial point of law. The counsel knows what will happen if he certifies without there being any point of law. He will not be trusted. A system of that kind, *i.e.*, throwing the responsibility upon the counsel may be adopted.

Mr. Justice Stuart.—*Q.* You will excuse my mentioning a case. There was a public woman who had a granddaughter. The grandmother died and a suit was filed on behalf of the girl for the property of the grandmother on the case that she should supersede her own mother because she was a public woman and her mother was not one. Don't you think a Bench of two judges could have decided that point ?

A. That is a difficult case where points of law are involved.

Q. Surely it was an easy point ?

A. Mr. Justice Stuart, may I put it to you this way ? Probably in the north there is not a class of dancing girls regulated as to their personal laws by custom.

Q. I don't think that this person was a dancing girl. She was described by the munsif as a "degraded woman."

Sir T. Desikachari.—It is a sort of technical term which is used now.

A. Degraded woman translated into Sanskrit is *pathitha.*

Sir T. Desikachari.—*Q.* Would you say something about the revisional jurisdiction under section 115 ?

A. I cannot formulate any definite proposition. But it is worth while to examine section 115, with regard to revisional jurisdiction in order not to make it a battle ground to contest what and what is not a question of jurisdiction. I have not worked up the exact methods.

Q. One important matter connected with Madras is, you are in favour of increasing the pecuniary jurisdiction of the munsifs, but are against increasing the pecuniary jurisdiction of the city civil court ?

A. Yes, it is a matter in which many considerations of vested interests arise. There is the vested interest of the barrister and the solicitor. The various Chambers of Commerce will rise up against it. They will raise strong objection as they did at the inauguration of the city civil court, and as they have been raising objection to the city civil court at Calcutta. It was thought at one time that the recommendations of the Bar Committee which was presided over by Sir Edward Chamier would simplify the matter. But I don't think that any simplification of the matter has resulted.

Q. You are in favour of raising the jurisdiction of the munsif up to 5,000.

A. At the same time I may tell you that if you raise the pecuniary jurisdiction of the city civil court to 10,000, you may as well abolish the Original Side.

Sir T. Desikachari.—*Q.* May I ask a few questions, treating you not as a Government Member but as a lawyer. With regard to benami transactions you see that some of these play a large part in the claim petitions. What remedy would you suggest for these ?

A. The difficulty is that in benami transactions very helpless individuals are involved—a widow for instance ; if you are going to shut out all possibility of proving benami transactions you would be hitting those people who can least afford to be hit. That is my difficulty.

Dr. DeSouza.—*Q.* Why should a widow or helpless individual resort to benami transactions ?

A. She is always afraid of the reversioners' starting a suit and getting a receiver appointed.

Q. Her motive is honourable then ?

A. Her motive is self defence in view of these circumstances.

Sir T. Desikachari.—*Q*. Notwithstanding the existence of section 53 of the Transfer of Property and Insolvency Acts, the Indian Penal Code and all the provisions in the Civil Procedure Code, etc., these documents are executed in order to cheat the creditors. How would you prevent this ?

A As a matter of fact I can say that this is largely a question of personal equation. There are some judges who take strict steps under section 53 and there are some judges who do not do so.

Q. With regard to partitions under the Hindu Law at present they need not have any documents at all. Do you think that partitions should be evidenced by documents and such documents should be registered ?

A. Yes.

Q. Having regard to the decision relating to the interpretation of the word "attestation" in mortgage deeds a large number of people now take the plea that such documents are not properly attested and are therefore invalid. Do you think that this decision should be allowed to be law ?

A. I think that at interpretation which has given rise to a certain amount of false testimony.

Q. Do you think that like sale deeds mortgage deeds nee not be attested ?

A. I think an acknowledgment would do.

BOMBAY PRESIDENCY (EXCLUDING SIND).

Evidence recorded at Bombay.

PRESENT:

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law—Chairman.

The Hon'ble Mr. Justice L. Stuart, C.I.E., I.C.S.
Dr. F. X. DeSouza, Bar.-at-Law, I.C.S.

Mr. G. M. Gupte, Advocate, High Court, Bombay, Co-opted Member.

Mr. C. V. Krishnaswami Aiyyar, Secretary.

List of Witnesses examined in Bombay.

Wednesday, the 20th August 1924.

*1. Mr. A. Kirke Smith	Representatives, Bombay Incorporated Law Society.
*2. Mr. F. A. Vakil	
*3. Mr. D. D. Bastawala	
*4. Mr. J. B. Kanga	Advocate-General, Bombay.

Thursday, the 21st August 1924.

*5. Mr. B. P. Messman	Representative of the Poona Bar Association.
6. Dr. N. K. Bapat	1st Class Subordinate Judge, Bijapur.

Friday, the 22nd August 1924.

*7. Mr. F. W. Allison, I.C.S.	District Judge, Ahmednagar.
*8. Mr. C. N. Mehta	District Judge, Broach.
9. Mr. N. H. Pandia	Joint Editor, Bombay Law Journal.

Saturday, the 23rd August 1924.

10. The Hon'ble Sir Amberson Marten.	Judge, High Court, Bombay.
11. The Hon'ble Sir Lalubhai Shah.	Acting Chief Justice, High Court, Bombay.
12. The Hon'ble Mr. Justice C. A. Kincaid.	Judge, High Court, Bombay.
13. The Hon'ble Mr. Justice C. G. H. Fawcett.	Judge, High Court, Bombay.

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* Evidence and written statement printed.

Monday, the 25th August 1924.

*14. Mr. H. C. Coyajee	Representatives, Bombay Bar Association.
*15. Mr. N. P. Engineer	

Tuesday, the 26th August 1924.

16. Mr. V. P. Raverkar	1st Class Subordinate Judge, Dhulia.
*17. Mr. S. D. Dadiburjor	Representative, Bombay Vakils' Association.
18. Mr. Purshottam Mulji Kapadia.	Merchant, Bombay.

Wednesday, the 27th August 1924.

*19. Mr. P. B. Shingne	Representative, Pleaders' Association, Western India.
20. Mr. G. M. Phatak	2nd Class Subordinate Judge, Bhusaval.
21. Mr. Ratanlal Ranchhoddas	Editor, Bombay Law Reporter.

Thursday, the 28th August 1924.

22. Mr. N. S. Lokur	Government Pleader and Public Prosecutor, Belgaum.
23. Mr. R. B. Kulkarni	Pleader, Belgaum.
24. Mr. G. V. Jadhav	Joint Sub-Judge, Nasik.
25. Khan Bahadur M. I. Kadri	Joint Sub-Judge, Ahmedabad.
26. Mr. Sorabji Framji Billimoria	Advocate, High Court, Bombay.
*27. Mr. K. M. Jhavri	Chief Judge, Small Causes Court, Bombay.
*28. Mr. R. S. Dadachanji	Judge, Small Cause Court, Bombay.

Friday, the 29th August 1924.

*29. Rao Sahib Hira Lal Desaibhai Desai.	Pleader, Ahmedabad.
*30. Mr. Mulchand Asharam	Pleader, Ahmedabad.
*31. Rai Bahadur Girdhari Lal	Government Pleader, Ahmedabad.

Monday, the 1st September 1924.

*32. Mr. H. C. B. Mitchell	Administrator General of Bombay.
*33. Mr. D. Forrest	Actuary, Oriental Government Security and Life Insurance Company, Limited, Bombay.
*34. Mr. K. F. Desai	Retired 1st Class Sub-Judge, Ahmedabad.
*35. Mr. S. S. Patkar	Government Pleader, High Court, Bombay.
36. Sir Chimanlal Setalvad, K.C.I.E., M.L.A.	Advocate, High Court, Bombay.

* Evidence and written statement printed.

Tuesday, the 2nd September 1924.

*37.	Mr. T. R. Kotwal . . .	Judge, Court of Small Causes, Ahmedabad.
38.	Mr. K. K. Thakore . . .	Assistant Judge, Ahmedabad.
39.	Mr. B. N. Sanjana . . .	Assistant Judge, Thana.
40.	Mr. V. V. Phadke . . .	Joint Sub-Judge, Hubli.
41.	The Hon'ble Mr. Justice D. F. Mulla.	Judge, High Court, Bombay.

Wednesday, the 3rd September 1924.

42.	Mr. C. N. Caroe . .	Representatives, Bombay Chamber of Commerce.
43.	Mr. V. A. Grantham .	
44.	Mr. N. R. Bhalero . . .	Pleader, Poona.
45.	Mr. P. C. Divanji . . .	Joint Sub-Judge, Nadiad.

Written statements printed of persons not examined:—

1. Mr. Govardhandas Narotamdas Ghael, High Court Pleader, Surat.
2. Mr. Shapurji S. Joshi, Managing Clerk to Messrs. Wadia Ghandy & Co., Solicitors, Bombay.

THE INCORPORATED LAW SOCIETY OF BOMBAY.

Written Statement.

What is stated below has reference generally to the High Court of Bombay only.

1. *(i) High Courts.*

Original suits:—

(*a*) Commercial causes, three months.

(*b*) Other causes { Summary suits, three weeks. Short causes, one month. Long causes, four—six months.

2. Only in long causes and in testamentary suits.

Causes.

1. Congestion of suits.
2. Lack of organisation of the disposal of cases.
3. Interference in hearing of long causes owing to precedence being given to—
   (1) Short causes,
   (2) Rent suits,
   (3) Commercial causes and other suits of this nature not being long causes.

3. That two or more Judges should take long causes only, and that to one judge should be assigned commercial causes to which he should give precedence over all other work as requiring urgent disposal.

4. No alteration.

9. No.

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* Evidence and written statement printed.

12. Although not directly concerned with the work of district judges we would suggest that in section 31 of the Administrator General's Act the limit for the value of estates to which the Administrator General is empowered to give certificates should be increased from *one* thousand to *five* thousand.

15. No. But there is no necessity to do so as the High Court gives speedy and efficient remedy and further possibly there is more protection for mortgagors in the High Court.

17. The principle of having certain classes of non-contested cases tried by officers of the court, who are not judges, is approved of as making for speedy and less costly justice.

18. No.

19. (*a*) No. (*b*) We are against this suggestion.

24. As regards the trial of original suits in the Bombay High Court, we do not suggest any alterations in the present procedure except that in our opinion a systematic and compulsory use of the provisions of Order XII of the Code would considerably shorten the time taken for the hearing of suits and make for speedy disposal of cases. As regards the trial of suits in the Bombay Presidency Small Cause Court, we suggest that a suit once begun should be heard from day to day until finished and not adjourned, after being part-heard, to a distant date, as is now being done.

25. This complaint is not applicable to suits filed in the Bombay High Court, where the provisions of Order V are found to work satisfactorily. We would, however, suggest that Rules 1 and 6 of Order V be amended and that instead of a date for hearing being at once fixed, the date for entering appearance or for hearing should be so many days (say 10 days) after service. This would avoid constant applications for amending the date owing to delay in obtaining the writ of summons and so in serving the defendant. We consider the application of section 106 of the Transfer of Property Act to civil suits not desirable.

26. The form of the plaint differs in as much as it is often too prolix. The use of the English form would be a change for the better, and especially if the specially endorsed writ could be introduced. The forms of plaint given in the Code are not generally followed in High Court suits and are in many cases unsuitable for such suits and we would rather have a rule that these forms should not apply to the High Court and that the High Court should have power to prescribe the forms of the pleadings to be used for suits in that court.

27. No.

28. Yes. The suggestion to use the services of village officials for serving process appears objectionable on principle.

29. Yes.

30. We approve of the suggested procedure which in effect is already in force in the Bombay High Court where summonses are served by clerks of the plaintiffs' attorneys, who are appointed "Special Bailiffs" by the Sheriff.

31. The present practice as to framing issues obtaining in the High Court works satisfactorily.

32. The procedure laid down in Order X is not followed in the High Court, as suits there are always called on at the first hearing for final disposal.

As to Order XI the provisions as to interrogatories are not generally used, as their use is not generally found materially to benefit the party administering them. The provisions as to discovery and inspection of documents before the suit comes on for hearing are fully made use of and with great advantage to the litigants.

As to Order XII, its provisions are very seldom made use of. The reason appears to be that under the said order as it now stands the party served with the notice is not bound to answer it and the penalty prescribed for omitting to do so is insufficient and unworkable in practice. Also, the time-limit fixed in Rule 4 for giving the notice hinders a more extensive use of it. " The day for the hearing " is fixed by the summons, which at its longest, is two months (in a long cause) while owing to the large number of suits pending in the Court, the suit may not come on for hearing for a year or two after the day so fixed; and yet the right to give notice to admit facts is lost within a few days after the filing of the suit, as the rule provides such notice to be given not later than nine days before " the day fixed for the hearing." As a remedy we suggest that there should be no time-limit (as is the case in Rule 2 of the same Order) or that a much longer time should be allowed. In fact the plaintiff should be allowed a sufficient time to give the notice after the defendant has filed his written statement of defence, which generally is filed long after the day fixed for the hearing by the summons. Secondly, the penalty for omission to answer the notice given under Rules 2 and 4 should be more drastic, such as, that the party omitting to answer the notice shall be deemed to have admitted the documents or the facts, unless the judge at the hearing shall otherwise direct. At the same time, longer periods should be allowed to the party who has to answer the notice, than the 48 hours (see Form 9, Appendix C to the Code) and 6 days provided for by Rules 2 and 4, which are quite inadequate. We are further of opinion that the giving and answering of notices under Rules 2 and 4 should be made compulsory, on pain of the party's suit or defence, on his omitting to give or answer the notice, being liable to be dismissed or struck out. We think a compulsory use of the provisions of Order XII will considerably shorten hearings and also avoid the delay caused by many a commission and will lessen congestion of suits and make for speedy and economical justice.

33. We do not approve of the suggestion made in this question, as it may lead to miscarriage of justice by witnesses being tutored, and otherwise.

34. Yes. It is in the High Court, and no delay results on the ground of absence of witnesses.

35. No, not in the High Court.

36. The High Court rules sufficiently provide for the use of affidavits in various matters where proof in that form can be reasonably given and we approve of the suggestion made in this question.

37. We are against this suggestion as being impracticable and likely to do injustice to the parties.

38. The application of Order XXXVII of the Code has recently been extended in the Bombay High Court to suits mentioned in section 128 (2) (*f*) (*i*) except suits on a trust, which we consider sufficient. We are of opinion that the utility of Order XXXVII will be enhanced if Article 5 of the First Schedule to the Limitation Act which provides a period of six months only for suits under section 128 (2) of the Code is repealed so that the period of limitation for suits filed under Order XXXVII may be the same as that for regular suits.

39. Yes, but with sufficient safeguards, to be carefully considered by the Legislature.

40. It does not seem desirable to throw such a duty upon the representative. The plaintiff has the conduct of the suit, but either party can apply to the court to add the representative as a party if so desired. Otherwise the representative will not be bound by the decree.

41. No. There is no difficulty in the High Court. The rules provide for the procedure if no consent has been obtained prior to the petition.

42. Generally speaking the practice of granting *ex parte* injunctions and orders is so carefully guarded by Judges of the High Court in Bombay that it is practically impossible to take undue advantage of these remedies.

43. We have no complaint against the length of judgments but it should be made possible to obtain copies of judgments with greater expedition. This is merely a question of increasing the clerical staff.

44. Yes. Where there is such a point of law the High Court judges are always ready to dispose of it where possible without taking other than necessary evidence on such point.

45. Original dates are fixed according to High Court Rules. Postponements likewise. Adjourned hearings are fixed by the Judges. We cannot attribute any delay to this system.

47. We do not think that any alteration is necessary. Orders for commissions have always to be obtained from the Judge and the questions of conditions are then discussed. We do not see that it is necessary or desirable to add to the powers of commissioners. The question of written interrogatories depends upon the nature of the evidence required and the witnesses to be examined. We would certainly not insist upon written interrogatories. They are so often unsatisfactory.

48. The question hardly applies to the High Court.

51. Yes. Adoption of similar procedure to that in the High Court.

52. All that is necessary in this connection is to speed up the work of the court departments concerned so that execution proceedings can be taken promptly. At present delay is caused owing to paucity of staff in the High Court offices.

54. We are in favour of this suggestion and think that this is a necessary reform and would be of great benefit.

55. We approve of the suggestion.

56. (*a*) No. (*b*) No. (*c*) Yes. We support the suggestion that it should not be necessary for a decree-holder to apply periodically and that he should be allowed to execute the decree at any time within the period of limitation. We, however, see no reason to limit the period of his remedy under the decree. Already debtors have plenty of means of escaping their obligations and we see no reason why the successful judgment-creditor should be forced after a time to lose all hope of recovering what is due.

57. We are not in favour as this might result in injustice.

58. Before any change is made we think that substantial grounds (and not isolated cases) should be shown for any alterations or additions.

59. We are against any alteration of the rule that notices should be given to both the judgment-creditor and the judgment-debtor. We see no objection to the second proviso to Rule 16 being deleted.

60. No.

61. (*a*) In the Bombay High Court notice is only issued if required by the provisions of Rule 22. No notice of an ordinary execution application is issued to the judgment-debtor unless it is one for arrest when notice under Rule 37 is required.

(*b*) We approve of the entire deletion of Order 21, Rule 22.

63. In our opinion there is no necessity for special notices in the different stages of execution proceedings in the case of money decrees sought to be executed by the sale of immovable properties. It will be sufficient if the judgment-debtors are given *one* notice at the beginning of the execution proceedings.

64. The Bombay High Court has its own rules which can be altered by the Judges if necessary.

65. No. See answer to Question No. 28.

66. We agree that a sale in a mortgage suit should clothe the purchaser with the property freed from the claims of all persons interested " in the mortgage security or in the right of redemption " (these words appear in Order 34, Rule 1 of the Civil Procedure Code). The essential for this is that all such persons must be before the court, and we, therefore, agree

with (*c*). This will involve a change in Order 34, Rule 1, by deleting the explanation. As to (*a*) and (*b*) there is no practice of encumbrance certificate in Bombay, but the point is that it is for the plaintiff in a mortgage suit (just like a plaintiff in any suit) to bring all the proper parties in a mortgage suit (*i.e.*, all persons interested as above) before the court as defendants. If he omits to do so, the risk falls on him; but it is not seen how in that case the purchaser could get any protection, as the decree would not bind such persons interested as are not impleaded by the plaintiff, and they would be entitled to re-open the proceedings and would not be bound by the sale.

We accept the suggestion in (*d*).

As to (*e*) we agree that in the case of a decree for sale a period of six months should not be fixed, but it should be left to the discretion of the court and in fact we do not see why any period should be fixed at all and the sale may be held immediately the amount is ascertained. In foreclosure decrees, however, we think the period of six months should be retained.

As to the last two queries, we think in simple mortgage suits there should be only one decree. There need not be a personal decree where the security has been exhausted. One decree should provide for all these things.

67. No such delay in Bombay.

69. Yes. A debtor under a decree who could and would raise the money to pay that particular debt rather than go to prison, escapes payment by filing his petition in insolvency and applying for a protection order. The insolvency proceedings drag on for many months, sometimes years, and the insolvent can usually obtain his discharge when he wishes to trade again. The delays in insolvency proceedings in Bombay are great. There should be reorganisation of that department of the High Court to enable more vigorous measures for bringing insolvents to book and realising and dividing their assets and the rules regarding the refusal of discharges to insolvents should be much more strictly enforced than they in fact are. This department of the High Court has not been augmented in accordance with the substantial increase of insolvency work which has taken place of late years. Having regard to the decision in I. L. R. 39 Madras 689, section 17 of the Insolvency Act should be amended so as to allow of the Bombay High Court's practice being continued of permitting the arrest of the insolvent unless he obtains a protection order.

70. Yes. The Court should be empowered by statute to authorise the Sheriff by a special order to arrest the judgment-debtor wherever found in British India. The provisions for arrest or attachment before judgment do not operate effectively to prevent such delay as it is very difficult to prove affirmatively to the court the defendant's intent to defeat or delay the decree, when applying for attachment or arrest before judgment.

71. Proof of a duly executed and, where necessary, attested deed, document or writing may be dispensed with where such deed, etc., has been registered under the Indian Registration Act.

72. No.

Yes. See answer to Question 71.

73. Secondary evidence may be allowed to be given in all cases where it is consented to. Except when applying for certified copies of documents from the High Court where there is hopeless understaffing, the time taken in obtaining certified copies is not long.

74. None, rather the contrary.

75. We would enforce the registration of partnerships (whether business partnership or joint family partnership) and inflict a severe penalty where the name of a partner is concealed. We would suggest some system of registration of the legal representatives of a person dying either by making

compulsory the taking out of probate or letters of administration or a succession certificate. In the registration of landed property in the collector's records we would suggest an entry whether the properties are held in the sole right of the person in whose name it is registered or as a member of a joint family or trustee. We have a further suggestion to make, namely, that the date of hearing should not be named in the writ of summons but that this date should be given as so many days after service of the writ, the number of days being inserted according to the place of residence of the defendant. This entails an amendment of Order V, Rules 1 and 6. This would obviate much delay and costs which the plaintiff is frequently put to in obtaining extension of the hearing date.

76. Yes.

77. All that is wanted is the compulsory registration of the names of partners and changes in the constitution of the firm from time to time.

78. The doctrine of " part performance " is required to do justice and equity in many cases, and should be retained in India.

79. Yes.

80. We cannot accept the proposition that no court should entertain a plea that any party executed a document unless it is registered, in the case of persons who cannot sign their names. The majority of such persons are poor and to throw upon them the expense of registration of every document they have occasion to execute would in our opinion be a grave hardship.

81. The law as it is at present should be retained. If a party to a transaction were to be debarred from pleading that it was a sham transaction injustice might be done to an innocent third party.

82. No. In our opinion for the interests of justice court fees are too high already.

83. Attestation is an important element in the proof. The execution of sale deeds and leases should be required to be attested but we think that one witness is sufficient and the law should be uniform as to the number of witnesses required in each case and therefore one witness only is necessary in the case of mortgages and gifts.

84. We do not consider it is altogether advisable to introduce legislation against champerty and maintenance in India, and the prohibition would be extremely difficult to enforce, but we would give the courts a wide discretion to enquire into the equitable nature of any agreement in the nature of champerty and maintenance, and as regards champerty would enforce a strict prohibition, with a severe penalty, in the case of any legal practitioner.

85. We would give the court power to refer to referees any cases involving technical questions whether the same be in regard to a trade or profession or art as also in cases of family or communal usage or custom or accounts and such like matters, but the decision of such referees should always be subject to confirmation by the court and be subject to an appeal.

86. We do not think the multiplication of law reports have interfered with speedy justice though they have made the work of practitioners more onerous. We would not minimise their number but we think that the official system of reporting cases should be revised as many important decisions now appear only in unofficial reports and we would suggest that a periodical issue of digests should accompany them in which decisions reversed should be omitted.

87. Extensive codification of the law leads to as much difficulty in litigation as the want of it as is evidenced by the numerous decisions in regard to some of the sections in the present codes. No code can be framed that will provide for the constantly recurring new circumstances which arise in modern life. The only branch of the law which requires codification is the Hindu Law and this is being already discussed.

BOMBAY HIGH COURT.

Suits.

1880	583
1890	727
1900	919
1910	1,225
1916	1,424
1917	1,479
1918	2,072
1919	3,768
1920	3,808
1921	5,435
1922	5,920
1923	5,256
1924 up to 19th August 1924	2,978

Miscellaneous applications.

1919	14,687
1920	11,725

Messrs. A. KIRKE SMITH, F. A. VAKIL and S. D. BASTAWALA, Representatives of the Bombay Incorporated Law Society, called and examined on Wednesday, the 20th August 1924.

Chairman.—You complain in your written memorandum of delays in the office of the High Court. Where does the shoe pinch? Is it a question that you cannot get translations, is it a question that you cannot get decrees, or is it a question that you cannot get copies or what is it?

A. We cannot get summons. I have suggested that in answer to Question 25. It is also given in answer to Question 75 and this touches the Civil Procedure Code. I suggest that these rules should be amended. Instead of fixing a date for hearing, a date for entering appearance should be fixed after service. That is the English system. In the English system we call upon the defendant to enter an appearance within six or seven days. Date of hearing is sometimes altered and that is a source of great trouble and waste of time.

Q. When the plaintiff files his plaint on the Original Side of the High Court, is the defendant called upon to enter an appearance within a certain time or a date of hearing is fixed as it is done in the mofussil?

A. In a short cause he has to appear on such and such a date.

Q. Before whom he has to appear?

A. Before the judge. In a short cause he has to appear for hearing.

Q. In a long cause, is the form somewhat different?

A. It is slightly different. Here a date for hearing is fixed, but he has also to enter an appearance on an intermediate date, and this is the difference between the short cause and the long cause.

Mr. Gupte.—Thirty days are prescribed for entering an appearance.

A. In the first instance a date is fixed for hearing on which the case will appear and then he is required to file his written statement and then he serves a copy on the plaintiff within four weeks.

Chairman.—How long does it take?

A. Two months or eight weeks.

Q. Is it necessary to fix a date for hearing?

A. We do not think it is either necessary or advisable. We will suggest that the English form should be followed where the defendant is required to enter an appearance. If he does not enter an appearance then the judgment will go against him.

Q. And then it can be transferred to the undefended list and disposed of as such? If he enters an appearance, then he would file his written statement within a certain time. If he files a written statement then it would be up to the plaintiff to get the case ready for trial.

A. It will go on in the ordinary way as a defended long cause. Soon after he enters an appearance, according to the practice of the Bombay High Court, it will come on as a long cause and will take its place.

Q. Perhaps it is a little difficult for me to follow it straightaway. It is entirely new to me. In Calcutta we call upon a person to enter an appearance. We call upon him to file his written statement within a certain time, but the date of hearing is another matter altogether. When a case is set down for hearing, it goes to the prospective list and it is taken up in order. If it is an undefended case, then it goes to the undefended list which is taken once a week or once a fortnight. If the case is of short cause character, then the plaintiff applies and gets an immediate date for hearing.

A. We do not apply here. If it is a short cause, it goes on in its ordinary course.

Q. How would you fix the case as a short cause or a long cause? How would you admit it—on the face of the plaint or after you know what the defence is?

A. On the face of the plaint, *i.e.*, on the presentation of the plaint. Having admitted it as a short cause, summons should be served for appearance. Then the date for hearing is fixed by the Prothonotary's office. Delay is usually caused by altering the date of hearing in the writ itself.

Q. Well, that is one point which you think should be taken into consideration. Is there any other point that you like to lay stress upon?

A. We think that the High Court may be free of pleadings such as laid down by the Civil Procedure Code.

Q. The forms of pleadings and rules in the Civil Procedure Code are, in substance, taken from the rules in practice in England. If the High Court wanted to draft a new set of pleadings, it could not be much different from the forms at the end of the Civil Procedure Code. The trouble about forms at the end of the Civil Procedure Code is really this—they are too simple and they are not of much practical utility. I take it that pleadings in the High Court are a good deal better than pleadings in the mofussil?

A. We have no experience about that.

Q. What is the trouble about pleadings in the High Court? Is it that they follow the old form? That is an important question. The English system is that you have generally your suit endorsed and it is necessary to have a statement of the claim. Do you not think that it will conduce to further delay, if you allow people simply to endorse the writ and then take further time?

(No reply.)

Q. What advantage would there be in insisting on a plaintiff filing a long statement of his case?

A. I don't think that he should be compelled to file a long statement. In many cases where the claim is simple, it might very well be done by one piece of paper specially endorsed. You have got a lot of correspondence copied and the agreements and the statement of claims, etc. Both the plaintiff and the defendant know perfectly well that there is an agreement

between them and correspondence between them. You get all copies and they form quite a volume when the plaint is presented.

Q. You say it is so voluminous and it is unnecessarily costly.

A. Yes.

Q. You say that a simpler method of stating the plaint should be applied.

A. Yes.

Q. Of course in England especially in contested cases it is followed by a form of statement. But it is very difficult to apply it here.

A. Speaking generally, it must be considered with reference to the cases in which it should be allowed. I don't think you would allow such a wide form as is in England.

Q. Would you go under Order 14? Here I understand you recently extended the application of Order 37. Does that work well?

A. Yes, very well.

Q. You really get the advantage of Order 14, under Order 37 procedure?

A. Yes.

Q. When an application is made under Order 37, is it made in the presence of the plaintiff or is it made *ex parte*?

A. It is made in the presence of the plaintiff. That is one of the rules we had altered. It is to be made in the presence of the plaintiff.

Q. The practice in England is that the plaintiff applies for a summary judgment on a form of application and the defendant files his statement and then the plaintiff has the right to reply after the defendant has disclosed his facts. But here under this system the plaintiff does not get that advantage.

A. Yes.

Q. Do you suggest any change? You see you have got that method under Order 37. Do you suggest any change or improvement on it?

A. The Limitation Article I think ought to be struck off.

Q. There has been no decision about it. I discovered in Madras at any rate where it applies that it would be a very good thing to abolish it.

A. Yes, I think so.

Q. Would you come to the question of summonses? There is some difficulty there. I understand that summonses are served by clerks of the plaintiffs or by those who are appointed specially by the Sheriff.

A. Yes.

Q. What do you mean by summonses?

A. Ordinary summonses, writ of summons, summons to appear.

Q. You have got that advantage here at present that the attorney's clerk can in fact do the serving if they are appointed as bailiffs. That gives a slight element of control or supervision to the Sheriff. Is that not a useful thing?

A. We see no reason why attorneys should not be directed to serve the summons themselves. Why should the Sheriff in civil proceedings be required to send summonses to the nazarat?

Q. Would you like the inspection and all that kind of thing to be made by the Sheriff?

A. Yes. Execution proceedings, etc., I should keep in the hands of the Sheriff. Other things, the process of the courts, I should leave to the attorneys.

Q. That is what has been done in Calcutta. Do you think in Bombay if that system were brought into force there will be no danger of its being abused? Do you think your association would be able to take steps if any particular attorney or attorney's clerk puts up false statement of service of summons?

A. I think so.

Q. What is the difficulty about service in Bombay? Does that take a long time?

A. Yes, it takes a very long time in the office and besides that, it takes much time in the translator's office. That is another point and we do not know why the translation is done by the official translator.

Q. Is it necessary to have the plaints translated?

A. No, the translation of the plaints is not necessary but only the summons are translated and this you cannot avoid unless you certify that the defendant knows English.

Q. Do you think that it is necessary to maintain that. Is it not a fact that the small cause courts serve processes in English without any translation?

A. I don't think so.

Q. We were told in Calcutta that in view of the experience of the small cause courts, the attorneys were of opinion that translation served no useful purpose and therefore the question is whether this translating business is necessary at all?

A. I think it is a necessary thing.

Dr. DeSouza.—What does this translation contain, translation of the plaint or merely a translation of the summons?

A. Only the summonses are translated.

Mr. Justice Stuart.—*Q.* Can that not be done by having printed forms? Do you mean to say that each and every time you have to get the ordinary English summons translated?

A. Of course there is a printed form but you have to put in a copy of the particulars of plaint.

Q. That is another thing. Is there any reason why that translation should not be made by the attorney himself?

A. Yes, that is quite correct. This translation can very well be done by non-official translators instead of their being done by the official translators which procedure even takes a long time.

Q. The attorney can certify that it is a correct translation of the thing?

A. Yes.

Q. If the translation is found incorrect afterwards the attorney should be held responsible for that.

A. Yes.

Q. Has that point ever been raised before the High Court that there is unnecessary waste of time in having the translation done by the High Court officials when it can just be done by the attorneys themselves?

A. I don't think so.

Q. Who are the Sheriff's officers? Are they the same person who serve processes in small cause courts?

A. No.

Q. The Sheriff has got his own men?

A. Yes.

Q. What are they paid?

A. I don't know.

Chairman.—Now as regards issues, I understand that in this High Court the practice followed is the same as that we have in Calcutta, *i.e.*, the pleadings are supposed more or less to show the issues of the case and there is time enough to settle the issues at the end of the plaintiff's counsel's opening.

A. We first settle the issues and then the plaintiff's counsel opens.

Q. Would it not be better to let the plaintiff's counsel to relate his own story and then to settle the issues?

A. I don't think so.

Q. I see you say that interrogatories are not much used because they are not found to benefit the parties. Why is that?

A. They do not seem to be insisted on here.

Q. Of course that means that the plaintiff will have to provide himself with the proof of many formal matters which really turn out uncontested.

A. Yes. Cases can be very much shortened if interrogatories are used, and of course the judges would have to encourage interrogatories and the admission of facts.

Q. Well, in your memorandum you say that the penalty is insufficient and that it is unworkable because the rule says that it is to be so many days before the date of hearing. You would like to see a change?

A. Order XII, Rule 4, reads:—"Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing . . . . . ." The date fixed for hearing is the date mentioned in the written summonses.

Q. I see you suggest that failure to answer should be deemed to be an admission. That is a little difficult.

A. Of course that is rather drastic.

Q. Under the English method if you serve a notice and the man does not turn up, then you have to prove it and the penalty is to visit the man with the cost of proving it. That might be sufficient to begin with.

A. That is provided here. You can do it under the Code, but we want something more. If a man does not answer then the party who wants admission sends a commission and incurs heavy expenses. Then he cannot get those costs out of the defendant.

Q. Then you can do well to compel the man to answer?

A. He does not answer.

Q. Well, of course, you can make him answer by putting interrogatories and taking out summonses for a commission. Then he has to state his case as to whether he admits or not.

A. We serve a notice on him to admit, but if he does not answer then there is no further procedure.

Q. Would it serve any use if you make a rule that if a man does not answer, you should get an order?

A. Yes, that would be good. You should take out summons and compel him to answer.

Q. Can you tell me what your arrangements are as regards commercial suits in Bombay? Supposing I file a suit in the Bombay High Court to-day, on a c.i.f. contract or a bill of exchange, or something of that sort, do I get any sort of precedence or special expedition?

A. We have got a different procedure for the commercial causes.

Q. Since how long have you had that?

A. More than ten years ago. The rules appeared in our book of rules in 1909.

Q. You have a certain precedence given to short causes?

A. Yes. A short cause is supposed to be that which is disposed of in ten minutes.

Q. How many suits in the commercial list are there at the present moment waiting for trial or ready for trial?

A. It is a heavy list. There is a great complaint at the present moment of commercial causes being delayed, but I cannot tell you how many causes there are.

Q. Does one judge sit taking these commercial causes and nothing else?

A. No. One of our complaints is that they are not given expedition as they should be. They get delayed by other causes such as short causes and chamber summonses. We submit that they should be given greater precedence over cases before the court. That is a mere question for arrangement in our High Court.

Q. Now tell me what do you do when a case is marked as a commercial case? Who does the interlocutory work?

A. It is done in the chamber.

Q. Not necessarily by the judge who hears the case?

A. No.

Q. At the present moment what sort of date for hearing is given?

A. One month is given for the filing of written statement, ten days after that for discovery and then the case is put down for hearing a month after.

Q. Is it heard after a month?

A. No.

Q. Then, the date is merely a nominal one?

A. Yes.

Mr. Gupte.—*Q.* Would you suggest that one of the judges should be allotted to do this work specially?

A. Yes. It should be given precedence. The judge who does it now may have to do some testamentary work or land references.

Chairman.—*Q.* You think that precedence should be given to commercial cases and rent suits?

A. Yes.

Q. Supposing if you went to the High Court and a judge takes ordinary long causes how long will it take for disposal?

A. Two to three years.

Q. Then, it will get worse, if commercial cases or any other cases get any more precedence than they get now.

A. I say that certain judges should do nothing but long causes and other miscellaneous testamentary suits and things of that kind. Then there should be another judge who should hear urgent cases like commercial suits. The judges who are to do long causes should not be interrupted with short causes.

Mr. Justice Stuart.—*Q.* What is meant by short causes?

A. Cases which could be disposed of in 10 minutes.

Q. Who is to decide whether a suit is a short cause or a long cause?

A. First the plaint is presented to the Prothonotary of the High Court and he decides it. Then, the defendant may file a written statement and apply for transfer to the long cause list.

Q. Would it be fair to assume that if a case has been pending for over a year, it would be a contested long cause?

A. Yes.

Q. If it is pending over a year, then, it would be a reasonable assumption firstly that it is a long cause and secondly that it is contested.

A. Certainly.

Q. Then surely the prospects in this High Court are terrible. I find that in 1922 there were 2,148 original suits pending for over a year in the High Court and that the number of contested suits decided that year was 473, so that there is four years' work straight off.

A. But, a great many of these cases which are undisposed of may be cases that have never been brought up for disposal.

Q. They are pending for over a year and it is certain that they are contested.

A. Yes. The cases are kept on the rolls because no body has taken any proceeding to bring them before the court for disposal.

Q. Do you mean to say that it is possible that cases which have really been settled are still on the list of undisposed of cases?

A. Yes. That is what happens.

Chairman.—*Q.* Just tell us what the practice is as to that?

A. Every case gets into the prospective list.

Q. If a party dies, then does it go out of that list?

A. Then, the party applies to put it on the stay list.

Q. These cases that you are talking of are the cases that have got into the stay list?

A. Yes.

Q. When they get on to the stay list, are they allowed to remain indefinitely or does the court allow some time for steps to be taken and if no steps are taken, are they pulled down? Is there any rule that if a case is not put in the prospective list within a certain time, it is open to the court to take judicial notice and to dismiss the case for want of prosecution?

A. I think there is no such rule.

Q. We will be very grateful to you if you tell us something about what will facilitate the execution of decrees?

A. You mean execution by attachment and by arrest of the judgment-debtor. As to the arrest there is great complaint. This work is done by the Sheriff's office.

Q. What is the complaint about? Is it that there is delay in the commencement of execution in the Sheriff's office? Is that due to insufficient staff?

A. The staff of the High Court is insufficient and inefficient. The pay fixed for the staff is not sufficient to attract efficient men.

Q. People, that are employed in the Sheriff's office are, I think, not paid by Government. Are they Government employees? Has the Government to do anything with them?

A. Sheriff's office is a Government department under the High Court. The Deputy Sheriff is a permanent employee of the Government. He is paid about Rs. 600 a month and the staff under him is paid by Government. The post of Sheriff is an honorary one.

Q. I think the Sheriff does not get fees now?

A. They go to Government.

Q. You say that the staff is insufficient in number and that quality of work is also not good?

A. Yes. I suggest that the staff ought to be paid more. If they are better paid, you will get better quality, because men of better quality will do more work.

Q. Have you any idea as to their present rate of pay?

A. I am afraid I do not know what they are getting.

Q. Then as regards immovable property in Bombay, is there any difficulty about execution apart from the inevitable difficulties of disputes as to ownership?

A. No. The rules about the proclamation of sales from the Commissioner's office can always be set right by the High Court. There is a complaint about attachment. The property ought to be attached the next day, whereas it at present takes three weeks or a month.

Q. Do you get fair price for sales when the High Court has to sell property?

A. Yes.

Q. What about mortgage sales?

A. They are also conducted by the commissioner.

Q. Do you get a reasonable price?

A. I do not think there is any complaint. Sales are held by the commissioner wherever the parties desire him to hold them either on the premises or in his own office.

Mr. Gupte.—*Q.* Is there any delay in drawing up decrees?

A. Decrees are drawn up by the attorney of one party and approved of by the attorney of the other party.

Q. Is there no delay in the correspondence between the attorneys?

A. No.

Chairman.—*Q.* Would you tell us something about the insolvency work? Are there any amendments or improvement that you think necessary?

A. Generally the complaint is that nothing is done in insolvency matters. The official assignee will not move unless some creditors guarantee his costs. Creditors do not take any notice and so nothing is done and the man gets discharged.

Q. Are there a great many people dealt with by summary insolvency procedure without any public examination?

A. Yes.

Q. And these people apply to the registrar to take their names out?

A. Yes. They can't apply for discharge direct. First the official assignee inquires into the matter and reports.

Q. Does he make the reports even though there has been no public examination and although the insolvent is not put to private examination or anything of that sort and although he made very little examination into the thing at all?

A. Yes, that is so. He simply makes his statement.

Q. Could you tell me of some way by which the official assignee might be assisted by utilising the provisions to have a committee of inspection of the creditors who can work, so to speak, with the official assignee to have the insolvency administered in their own way?

A. I have not come across of any case like that. Once they were told that a man has applied for insolvency the creditors would not trouble themselves any more.

Q. Do you think that enough has been done to bring this to the creditors' notice?

A. Then they have to spend money. They will have to apply to the court and the court will have to form meetings and the entire expense will fall on the creditor who moved first.

Q. Is there a meeting of the creditors called before deciding an insolvency?

A. No. I think if that were done that would be a very good suggestion.

Q. In the ordinary way you probably know that the first thing that must be done is a meeting of the creditors. Then the creditors make up their mind whether to accept a composition. The difficulty in Calcutta was that once a man knows that one is an insolvent everybody leaves it as hopeless. If there is some particular speculative creditor then the creditor fights out the discharge. But generally nothing is done at all.

A. The result is that it is rather hopeless to fight the discharge.

Q. Don't you think that something might be done to require a meeting of the creditors?

A. I think that is a very good suggestion.

Q. If you had a creditors' meeting where the creditors themselves decide, then the creditors might take more interest. Here the creditors themselves

assume it is hopeless trying to follow the proceedings and the insolvent is never punished and then many of them are easily discharged.

A. It is very difficult to prove whether one is an insolvent, first of all.

Q. Suppose you get a certain number of cases where people are made insolvent on the petition of the creditor, there are sometimes quite substantial assets. Do you find that the administration works all right in those cases?

A. I think so. Where it is a contested and heavy case the matter is not given to the insolvency judge.

Q. Have you ever considered the way in which insolvency is done in Madras?

A. No.

Q. They have started a system under which when a man is an insolvent in the High Court of Madras, the official assignee receives the collections and the outstanding debts due to him by others and sends out notices to all his creditors, requiring them to lodge and to state what defence they have got to frame against him. You know such a system as that there?

A. No. That suggestion was sent to us by the Government whether it should be adopted here. We favoured that suggestion.

Q. It works very well in Madras. It takes a judge to dispose of these applications for discharge and interlocutory applications. It seems a little hard for the debtor. And a man who in the ordinary way is liable to be sued in the small cause court suddenly gets a notice. You are in favour of it as an association?

A. Yes. We are in favour of it provided it has practical result and that it comes before the insolvency judge who may dispose of it himself or arrange for the early disposal of it.

Q. Any of you, gentlemen, would like to suggest any other point?

A. No. We had given in the written statement what we had to say.

Dr. DeSouza.—I find that the average number of institutions on the Original Side in Bombay is over 5,000.

A. I have got a list quite up to date and I can give you the correct figure. In 1916 the number was 1,422, in 1921 it was 5,435, in 1922 it was 5,920, and last year the number was 5,256.

Q. It is more or less 5,000 then?

A. No, it is something round about 4,000.

Q Out of this total number of suits can you give me a rough idea as to how many suits were of Rs. 5,000 or under in valuation? I want a rough idea.

A. I can give you. That will probably be in the statement which we sent to the Chief Justice two or three years ago.

Q. I calculated from the figures and found that the average number of suits that would come to Rs. 5,000 or under would be 30 per cent. and I think that that would be a fairly correct estimate.

A. Taking the year 1922 which was the big year the total number of suits under Rs. 5,000 was 1,280 short causes, commercial causes 33 and summary 378.

Q. What would that come to?

A. The total is 1,680.

Q. What was the number of institutions?

A. 5,873.

Q. 1,680 out of 5,873. That works out to what I have said 30 per cent. of the total institutions.

Q. Could you tell us as regards the nature of these suits?

A. I have given three heads. Short causes, commercial causes and summary suits.

Q. Summary suits you mean under Order 37.

A. Yes, suits entirely on promissory notes and bills, etc.

Q. Were all the 33 commercial cases you mentioned as regards c.i.f. contracts.

A. Probably all.

Q. The majority of the suits under Rs. 5,000 being short causes or commercial causes. Is special expedition given in their disposal in the High Court? Are they disposed of within three to six months?

A. I think less than that.

Q. May I take it that they are disposed of within three months?

A. Even less than that.

Q. Commercial cases come on for hearing, I suppose, within that period?

A. Within two months.

Q. Now the other cases which you have mentioned as short causes are also disposed of within three months?

A. Within three weeks.

Q. What I wanted to find out was this. Whether really there is a real delay in the disposal of suits of Rs. 5,000 and under?

A. No.

Mr. Justice Stuart.—Have you any experience of work in the court of small causes?

A. Not very much now.

Q. Are cases heard there with reasonable expedition?

A. Cases appear on the board and now the board is very much congested. Even if a case is reached and it is not disposed of on that date then it is deferred for a month. It is not heard from day to day.

Q. And people have often to bring back their witnesses?

A. They have to be brought back every time.

Q. Does it happen that a man has to bring back his witnesses four or five times?

A. Yes.

Q. Is that the fault of fixing more work for the day than can be got through?

A. Yes.

Q. And you have that complaint here?

A. Very much in the court of small causes. I personally go down to court of small causes generally in important cases where there are some points to be contested.

Q. Have you had that experience personally, that you had to return because your case was not taken up?

A. Very frequently, and then when a case is taken up and it is not finished on that date, it is postponed for a month.

Q. Even after your witnesses have been commenced, it is not heard from day to day?

A. No, it is not heard from day to day and it has to be postponed for three weeks or one month.

Q. How on earth is the judge supposed to keep all that in his head?

A. I do not know. Of course it is very likely for the judge to forget little details.

Q. Unless he takes down long notes?

A. They do not take down long notes.

Q. What is the staff in Bombay in the court of small causes?

A. Five and one extra.

Mr. Gupte.—Do you know that many people apply for transfer of their cases from the court of small causes to the High Court?

A. Many people do.

Mr. Justice Stuart.—*Q.* You mean to say that they get them heard quicker in the High Court?

A. Yes, and people will prefer to file their cases in the High Court because they come on for hearing more conveniently there and they get discovery. In the court of small causes there is no discovery.

Chairman.—*Q.* Is there no rule or they do not know?

A. It does not apply.

Q. There is no rule?

A. No. They cannot know what documents the other side has.

J. B. KANGA, Esq., Advocate General, Bombay.

Written statement.

I agree with the views expressed in the memorandum of the Bombay Bar Association, which has been jointly prepared by me and the representatives of the Bombay Bar Association, except the answer to Question 15, for which refer to my oral evidence.

Mr. J. B. KANGA, Advocate General, Bombay, called and examined on Wednesday, the 20th August 1924.

Mr. Kanga.—I am very sorry that my memorandum is not here. It will be ready in a day or two.

Chairman.—*Q.* But perhaps now you can treat the matter quite formally if you can mention any special points that you think we ought to pay special attention to.

A. My experience is only confined to the Original Side of the High Court. I have little experience of the small cause court and the mofussil courts.

On the Original Side as regards the service of summonses I should think that if the service were to be left to the solicitors instead of having it effected through the Sheriff, it would be done expeditiously. Then translation in another difficulty, for every document has to be translated. It is very desirable that private translation should be allowed. Then after the service is effected, the chapter in the Civil Procedure Code as regards discovery is availed of except interrogatories. Interrogatories are not made use of, and as regards admissions, I think that it is through sheer neglect that they are not made use of. I think that if they are not properly made use of at the hearing, costs should not be allowed for that portion of the hearing which could have been avoided by recourse to the rules as to admission of documents and facts. The system of issues is very good on the Original Side. The pleadings convey evidence to some extent and relevant documents and correspondence are annexed to the plaint and those who preceded me were of the opinion that in this country it is very desirable that the man should be made to state his facts in the first instance. But I do not think that we can have pleadings in this country absolutely equivalent to the English pleadings. Then as regards the form of pleadings given in the Civil Procedure Code they do not go very far. They are inadequate. Then after the trial has commenced, so far as the Original Side is concerned, some judges decide cases quickly and some take time.

As regards appeals I think they are heard quite in time and there is no delay. In my experience I have seen that the number of dishonest claims is very insignificant as compared with the number of dishonest defences. Very often dishonest defences are put in simply with a view to gaining time, and that is one of the reasons why the written statement is sometimes made very large for short causes in order that the judge may transfer them as long causes.

Then as regards the execution proceedings, it very often happens that a good deal of time is taken before the judgment-creditor recovers the fruits of his decree, and I should think that section 47 of the Civil Procedure Code which allows appeal from all execution proceedings should be altered. Sometimes absolutely for the purpose of gaining time an appeal is put on the file.

Further, I would suggest that a special bailiff should be empowered to effect arrests throughout British India. At present that point is also doubtful. Then, of course, there is the Insolvent Debtors Act, which sometimes or very often works for the benefit of the debtor and not for the benefit of the creditor and there is a good deal of delay in insolvency proceedings. The High Court after 1903 has introduced the practice of giving instalments. I believe that Mr. Justice Davar was the first judge to introduce that. Though that section applied to the High Court before, in practice it was never applied.

Q. To grant instalments at the time of the decree. If you do not do it at the time of the decree you cannot do it at all?

Dr. DeSouza.—Except with the consent of the judgment-creditor.

Chairman.—*Q.* Is that practice followed now? Do people get instalment orders after the passing of the decree?

A. Yes.

Dr. DeSouza.—*Q.* What is the justification for that order?

A.—Otherwise, the judgment-debtor will have to plead inability and may have to be let off.

Chairman.—*Q.* The difficulty about that in some places—particularly in small cause courts—is the moment you begin to apply for execution, the judgment-debtor comes in with an application to revise the instalment order. Then, it is adjourned for months. In that way you can have applications with no basis at all and they would keep creditors waiting for months. Do you have this difficulty?

A. No. When a man is brought up before the judge he suggests a certain number of reasonable instalments and the creditor generally accepts it. Otherwise the judgment-debtor also says that he would take the benefit of the Insolvency Act and the judgment-creditor may not get anything The judgment-debtor gets no protection till he gets an interim order from the insolvency court.

Q. Supposing a man has become an insolvent and has not got protection order, can you arrest him?

A. Only in the High Court.

Q. Supposing a man is arrested and he files a petition afterwards, what happens?

A. Usually the practice is this. He is asked to give some security for his appearance—I mean a small amount or the surety of a friend or somebody that he will appear—till he gets a protection order. After he gets his protection order, he is let off.

Q. Do you have many people who have become insolvents and who don't get protection order?

A. Yes. There are many people. If it is urgent, they sometimes make an application urgently.

Then, I have this suggestion to make as regards the hearing of suits. Equity suits and trust suits can wait. Suits of a commercial nature should be given precedence. They are given precedence now but they should be given more precedence. I mean equity suits can well wait for 3 or 4 years but it is very hard if suits between traders are not disposed of within at least a year. In our High Court commercial suits are given precedence and up to now and even now only one judge tries them. Unfortunately the present learned judge is also the Chamber Judge and much of his time is taken up with chamber work. Then there are a few testamentary suits. As regards short causes people want to file short causes in order to snatch a decree very quickly. But our High Court rule at present is that, if there is any defence, then the suit must be transferred to the list of long causes. That is the existing rule. It is regardless of the subject matter. What the judges do is if they see that the amount involved is small and if the case would not take more than 2 or 3 hours they give a special early date for that suit. In 1903 or 1904 when the same rule existed I remember the Judges saying "Well, this suit will not take more than 15 minutes. So, it will not go into the list of long causes." Now, there is a sort of contested short causes list and early dates are given for them.

Dr. DeSouza.—*Q.* Is that not a very desirable thing?

A. Yes, I think, in many respects. I always see that when such a list is prepared and the cases come on for hearing, the defendants disappear.

Q. Suits of small valuation under Rs. 5,000 are disposed of very quickly in Bombay?

A. If the defence is a real one they will be transferred to the long causes.

Q. How many such suits will there be? Will they be 10 out of 100?

A. It will be 5 out of 100. This reminds me of one other matter, *viz.*, the enhancement of the small cause jurisdiction. I do feel that the Bombay Bar Association are taking different views. I feel that where partnership suits and administration suits involve only a very small estate there is no reason why they should be filed in the High Court. After they are finished, the litigant hardly gets anything. The whole of the estate is gone in the case.

Chairman.—*Q.* You may get partnerships of small capital but it may be getting a lot of business. The reason is not so much that the small cause court judge could not do it but would it not rather entangle the small cause court if that kind of administration work is given to it?

A. Yes. Possibly they have got no machinery. There are no discovery sections. They can appoint special commissioners. Even if these suits are after all to be filed in the High Court, something must be done to speed up those cases.

Dr. DeSouza.—*Q.* I take it that generally you are in favour that this class of suits should be tried by small cause courts with extended jurisdiction. But in view of the difficulties pointed out by the Chairman, what would be your attitude towards a suggestion that is now being made for suits of this nature, *viz.*, that they should be disposed of by a city civil court on the same lines as the Madras city civil court?

A. I don't see any difference between a city civil court and the extension of the jurisdiction of the small cause court.

Q. But that court will try all sorts of suits.

A. The only objection to that would be that there would be two additional establishments. If the small cause court's jurisdiction is enhanced, the expense to government would be less.

Chairman.—*Q.* I understand you wish to alter the Presidency Small Cause Court Act and the schedule to bring in a large number of other suits?

A. Yes.

Dr. DeSouza.—*Q.* I take it that your inclination is not against the constitution of a city civil court in Bombay?

A The only objection is that two courts will be running on double expense or something like that. Two buildings, in fact, everything in two will be required.

Mr. Justice Stuart.—*Q.* I take it you have large experience of first appeals from the lower courts?

A. Yes.

Q. How do you find the practice of printing judgments and having evidence type-written?

A. It is very inconvenient and I am told that litigants cannot pay for it.

Q. So you consider that both for the bar and the bench it is a waste of time?

A. Yes, considerable time is wasted.

Q. Because no man can get through type-written stuff as quickly as through printed matter?

A. Yes, and sometimes the record is so bulky that it becomes very hard for the counsel to go through the whole of it. On the Original Side paper books used to be printed rather luxuriously and they have been curtailed now.

Q. How long does it take to get a really difficult case on the Original Side on for hearing?

A. I think it should be ready by a year.

Q. That is your ideal, but how long does it take?

A. From three to four years.

Q. In appeals, how long does it take before the first appeal comes on for hearing?

A. From mofussil you mean?

Q. Yes.

A. Two years or more.

Q. Is that due to an insufficient number of judges? You know that is a forbidden subject.

A Speaking of the forbidden subject, Bombay should have 10 judges.

Q. How many are sitting on the Original Side at present?

A. At present on the Original Side 5 judges are sitting and four judges are at present sitting on the appellate side. But that is only a temporary arrangement. Ordinarily seven judges sat on the Original Side and two on the Appellate Side.

Q. I find that in 1922 the number of contested original suits decided by the High Court was only 473?

A. Yes.

Q. How many judges worked in that year?

A. Six judges were sitting.

Q And they got through only 473 original suits?

A. But we have also to take into consideration the fact that one judge was engaged in sessions work and another absorbed in chamber work.

Q. I cannot lay down a rule that judges should decide so many contested cases in a year—that depends upon the cases. As a matter of fact I want to get at figures. I want to know one thing how many judges heard those suits?

A. At present only two judges are sitting on the Appellate Side and at abnormal times four judges are necessary.

Chairman.—*Q.* Has the Appellate Side work slacked off?

A. Not slacked off. Judges on the Appellate Side sometimes sit till late in the evening and they do much extra work.

Q. As regards appeals, can you tell me how many are thrown out under Order 41, rule 11, and then of those that are admitted, how many ultimately fail and how many come out successful?

A. I cannot give you the exact figure, but at present many are summarily dismissed.

Q. About 50 per cent.?

A. Yes. Out of those that are admitted, I think, many fail and therefore many of the appeals that are filed are summarily rejected.

Q. As regards those that are summarily rejected the respondent is not injured by the delay. The only damage or nuisance is that a certain amount of time of Judges had to be taken up. As regards those that get admitted under rule 11 and afterwards rejected, if the proportion of those dismissed is very heavy then that is really objectionable. Do you think that instead of giving people an appeal on points of law as a matter of right and summarily dismissing under rule 11 some 50 per cent., it would work better in the long run if you state that there should be an appeal on points of law, but only on special leave by the High Court?

A. Does it not work in the same way? We have to ask for admission.

Q. By this way, rather fewer cases would be given special leave to appeal.

A. The Judge would not feel inclined to refuse if there is a slight point of law.

Q. The question is whether you can devote sufficient time and care for the hearing of the matter where it is more than merely argument. Don't you think that in cases of any special value, or supposing you have a case whose value is Rs. 500, would you regard that as any reason why leave should be given to appeal to the High Court apart from the point of law? You have got to show him some reason.

A. The only reason is that in this country people regard the right to appeal to the High Court as a very valuable one. They think that High Court is the only place where they can find justice.

Q. It is rather foolish. The cold facts and figures of second appeals that are preferred show that large number of cases fail.

Mr. Justice Stuart.—*Q.* I am going to give you certain figures as they were in 1922. Of 289 appeals that were rejected under Order 41, rule 11, 3 were dismissed for want of prosecution. That is 292. 7 were dismissed *ex parte*. That is 299. 2 were decreed *ex parte*. 222 were dismissed after hearing. 19 were modified. 63 reversed. Out of 311 that actually came for hearing 224 were upheld because the decision was right on point of law. Is it worth while in deference to sentiment to expose the respondents to this delay? The man has to appear three times and so on and several years elapse before he is able to get final orders. Is not that approaching a scandal?

A. I may also give you another point. The subordinate judge in the judiciary is kept in check by the present procedure. If you don't allow appeals they will be freer.

Mr. Justice Stuart.—*Q.* But if you allow appeals by special leave, would not that be sufficient check?

A. I think that would be.

Q. As you are submitting your opinion in writing, will you be kind enough to add in it your views on making a bench of selected subordinate judges for appeals under Rs. 1,000; 2 judges on the bench, and only for cases under Rs. 1,000 and having those benches final on facts subject to an appeal as a right if the members of the bench disagree and also giving them power to state a case in an event when any point of real difficulty or a point which is likely to create a difference arises.

A. Yes, something like the small cause courts.

Q. Yes. The people who started the scheme point out that this would be a better first appeal than any that exists already. Figures show how very frequently subordinate judges are upheld already on points of law. I don't want to ask your opinion now.

A. We are generally preparing the memorandum jointly.

Q. Will you be kind enough to include this in that?

A. Yes, I will discuss it with others and give you a reply.

POONA BAR ASSOCIATION.

Written Statement.

1. A. (*ii*) This is a very comprehensive question and is not capable of a categorical answer. The duration of a suit in a court of first instance depends upon the nature of the suit, the number of documents relied upon by both sides and the number of witnesses examined on both sides.

To give an answer on the theory of averages will be somewhat difficult. Having regard, however, to the habits and customs of the people of this province, we think that original suits on title in the district courts should be disposed of within one year, and those for money within six months. Regular appeals and miscellaneous appeals in the district court should be disposed of within six months and four months respectively, time to commence from the date the appeal documents are ready after service of notices to the respondents.

In the subordinate judges' courts, suits on title, if less complicated, should be disposed of within a year, and if more complicated within two years from the institution of the suit. Money suits should be disposed of within six months.

The small cause courts are established to give a speedy and summary remedy to litigants. Suits, therefore, in these courts should not be allowed to remain on the file for more than six months after the institution of the suit.

B. Claim proceedings in execution should be disposed of within 6 months.

We need not say anything as regards (*i*) and (*iii*) of A and C of the question, that is, High Courts and district munsifs' courts and the presidency small cause courts.

2. We admit that the period actually taken for the disposal of these proceedings exceeds what we consider to be reasonable limit in some cases.

The main causes for the same are the following:—

(1) The present procedure for effecting service of process and notices in connection with suits and appeals, by court officers as well as by post office, is to some extent responsible for a great deal of avoidable delay and difficulty.

(2) The case has to wait for its turn to come on the board on account of the old suits being still pending.

(3) Litigants are in the majority of cases unbusinesslike owing to their ignorance, and do not take the necessary immediate steps for filing documents and summoning witnesses within the proper time.

(4) In many cases, the judges are not familiar with the language of the place where they are posted.

(5) There is temptation on the part of judges to dispose of later cases, if they are more or less simple, with a view to get many disposals, with the result that older complicated cases are allowed to remain in arrears.

(6) The principle underlying the High Court Civil Circular No. 144 is not properly observed.

3. (1) It should be made incumbent upon the plaintiff to have the first summons served on the defendants, for which he must be given the costs duly certified by his pleader.

(2) A special clerk should be appointed, in each court, to give intimation of non-service of summons to the party concerned or his pleader, to enable him to take necessary steps.

(3) True copies, under the signature of the pleader, of all the documents produced with pleadings or otherwise should be supplied to the other side.

(4) The court should be located, as far as possible, at the centre of the area over which it has got jurisdiction.

(5) The proposal of appointing experienced and competent judges, to go round from place to place, and to hold court for six months at a time to clear off arrears, is a solution worth giving effect to.

4. The recruitment should be made, without exception, from amongst the practising pleaders of not less than ten years' standing. It is suggested that names should be submitted by the various Bar Associations, and the final selection should rest with a Committee consisting of a High Court Judge and two members elected by the Bar of Bombay.

5. No special training is necessary if they are recruited directly from the Bar on the lines suggested above.

6. No, justice is not impeded by transfers of judicial officers.

7. It is difficult to lay down any standard, but it is submitted that quality of work, and not the quantity, should be the criterion for judging the efficiency for promotion, etc., of judicial officers.

8. Occasionally, in district towns, the concentration of many civil courts in one place and consequent waiting for members of the legal profession, cause delay at times, but pleaders take care and arrange to avert this delay.

9. We do not think that there is any necessity at present to effect any change in the jurisdiction of the civil courts. We do not think that by conferring a higher jurisdiction on some of the courts the disposal of suits will be either more speedy or the means of obtaining justice will be less costly.

10 and 11. We need not give any opinion as we have not district munsifs on our side.

12. In places where a district court and a subordinate court exist side by side, a good deal of insolvency work is generally done by the subordinate judge's court. It is not necessary to relieve the district court any more.

13. The succession certificate proceedings are now dealt with by the subordinate courts. Transfer of other work from the district court to the subordinate courts is not at all necessary.

14. We need not give any opinion, as we have no village courts.

15. We are against widening the jurisdiction of small cause courts. As things go at present, the administration of justice in small cause courts is not as satisfactory as it should be. The delay in the disposal of suits is appalling. There is no use in thrusting more work upon courts, already groaning under the weight of unmanageably heavy work, even with the limited jurisdiction that now obtains.

But if at all some work is to be transferred to the small cause courts, we suggest somewhat as follows:—

The exceptions to the jurisdiction of the small cause courts, contemplated by the 2nd schedule to the Provincial Small Cause Courts Act, may be modified as follows:—

Article 8.—Rent of immovable property such as land may be recovered in the small cause court.

The small cause court may be authorised to try suits for setting aside its orders of attachment or otherwise as regards movable property.

Suits to contest awards filed in small cause courts may be tried by small cause courts.

Articles 20, 24 and 26 may be dropped altogether.

Article 34 may be deleted.

Article 35 (2) (*j*) may be dropped.

(Part ii) suits involving immovable property should not be tried by the small cause court.

In mortgage suits and partnership suits, sometimes intricate questions of law and fact are involved. That the valuation of such suits is low, is no justification for denying to litigants the right of a regular trial on issues of law and fact, instead of the summary disposal, which would be meted out in the heated atmosphere of a small cause court.

16. (*a*) Summary procedure as contemplated by section 128 (2) (*f*), Civil Procedure Code, should not be introduced in the lower courts, as the illiterate litigants in the mofussil will not be able to abide by the same.

(*b*) We need not answer (*b*) which refers to Bengal and Bihar.

17. We are against investing sub-registrars with jurisdiction over any class of civil suits, as they are not expected to have any legal knowledge to try contested suits.

18. We do not think that, at present, the right to appeal is granted in too many cases and we are not for curtailing to any extent the existing right of appeal.

The right of appeal is a salutary check upon subordinate judicial officers.

19. We are not in a position to give an opinion either way in the case of High Court L. P. appeals.

20. We do not think that any frivolous second appeals are filed. If any, provisions of Order 41, Rule 11, are resorted to, and they are mercilessly weeded out before notice.

The right of second appeal exists only on questions of law, and whatever be the value of the property, it is necessary that the law should be rightly applied. In suits relating to immovable property second appeals should be allowed as a rule.

21. Deposit of the decretal amount is absolutely unnecessary. Preferring a second appeal does not operate as a stay of execution. In the case of money decrees, ordinarily stay is allowed only on the appellant furnishing security and on terms with regard to interest. In these circumstances, compelling the appellant to deposit the decretal amount will, in effect, deny the right of second appeal to a large class of people.

The endeavours of the Civil Justice Committee should be not to reduce the volume of litigation, by scaring away litigants and by shutting them out, but to keep the portals of the temple of justice always wide open, and to make adequate provision for entertaining all suits and all necessary appeals and suggest means for their speedy and proper disposal.

22. The power given under Order 41, Rule 11, is not only duly exercised but is rather too strictly used.

23. It will be quite harsh to require the deposit of the decretal amount before a revision petition under section 25 of Provincial Small Cause Courts Act can be presented, for reasons already stated in answer to question 21.

The suggestion contemplated in part 2 of the question cannot be accepted.

24. In suits in which summons for final disposal is to issue, the plaintiff should be required to file, along with the plaint, affidavits as regards the proof of his claim and all documents. It should also be made incumbent upon him to serve the summons on the defendant ten days before the date fixed for hearing.

The defendant also should put in necessary affidavits in support of his contentions and all the documents.

Both the parties should supply the other side with copies of the affidavits three days before the date of the hearing.

25. It should be provided that plaintiff shall after the date of first hearing has been fixed by the court (which it should do within 8 days) deliver or tender a copy of the plaint and the copies of the affidavits, etc., if any, filed by him along with the plaint, personally to the party who is intended to be bound by it or any adult member of his family or through registered post.

If the plaintiff satisfies the court that he is unable to get the service of the summons or notice effected as above, he may then apply for service by an officer of the court. The officer in cases of non-service should inform the party or his pleader immediately.

The court should provide for a special clerk whose duty will be to give intimation of non-service to the parties or their pleaders, to enable them to take further steps in the matter at once.

26. We agree when it is said that the nature of Indian actions is different from the claims common in England, and Indian actions are so varied that it will serve no useful purpose to institute any comparison between English pleadings and Indian pleadings.

The forms given in the Civil Procedure Code are generally adhered to, whenever possible and useful.

It is not necessary that any penalty should be attached in case of non-observance of these forms.

27. The provisions of Orders VII and VIII are not neglected.

28. The first part of the question has been largely dealt with in our answer to question 25; we answer the second part in the negative, as the village officials are often partisans of one party or another.

29. The suggestion contained in the question is both unnecessary and impracticable.

30. The suggestion put forward is acceptable and is therefore worth while to be given effect to.

31. No suggestion can possibly be made. The judge should, if he thinks necessary, have recourse to Order X and examine the parties in order to understand better the facts of the case and the real points at issue.

32. Examination of parties should be limited to the purpose for which it is intended.

The provisions as regards discovery and admission of documents are neglected to some extent, due partly to carelessness or neglect of the parties, and partly because a particular day is not generally fixed by the court for this purpose.

If a day is fixed, it will make parties vigilant and thus it will save time.

There is also remedy under Order 12, rule 12.

33. It is submitted that the present practice is more satisfactory. The suggested practice would lead to manufacture of false evidence on both sides, each side having got the advantage of knowing the weakness of the other.

34. Before regular work is commenced, the court should ascertain which of the suits fixed for hearing that day are likely to be heard that day; the witnesses in such suits should be asked to wait; other suits, not likely to be taken up, should be adjourned and witnesses should be given a re-attendance order for the adjourned dates.

35. On the quantity of oral evidence to be let in, nobody can prescribe any standard. Any such standard seems undesirable. Citing and examining witnesses is the right of parties and the courts should not interfere with it. It is rarely that very many witnesses are examined to prove nothing. Vakils are as specially interested as the court or anybody else in seeing that more time is not taken than what is absolutely necessary.

36. Ordinarily, proof by affidavits in simple matters is encouraged, but the deponents must be produced when necessary for cross-examination. We do not approve of the suggestion as regards pre-payment of costs.

37. To fix a time limit for the examination and cross-examination of witnesses, if left in the discretion of the trial court, is likely to cause great hardship.

38. Summary procedure should not be introduced for the reasons stated in our answer to question 16.

39. The principle of representative suits is already wide enough and to extend it to cases of Hindu Law would complicate matters. If it is applied to Mitakshara families, it is apprehended, it will go against the basic principles of Hindu Law.

This question belongs not to the law of procedure but to substantive law. We do not think it proper to introduce sweeping changes in the substantive law in the guise of improving the law of procedure.

40. We are against throwing such a duty on legal representatives. The present practice is the best suited for the purpose.

41. The remedy proposed is impracticable on the ground of cost and the delay that may be caused in the inquiry as to who is a fit person.

42. We are of opinion that undue advantage is not taken of the practice of granting *ex parte* injunctions and orders. The granting of the same is entirely in the discretion of the court, and it is always open to a party aggrieved thereby to apply the court to set it aside.

43. It is hard to imagine that any scheme could be framed to limit the length of judgments, and to see that the judges do not exceed such a limit.

44. As far as experience goes, points of law going to the root of the claim or defence are mostly disposed of at the beginning of the trial.

45. Dates for original and adjourned hearings are generally fixed by the court.

46. Pleaders are generally consulted by the courts in ascertaining approximately the time required for examination of witnesses and for arguments.

47. We answer the first part in the negative. The present procedure is working satisfactorily. The powers given to commissioners at present are sufficient.

48. No departure should be made from the present practice. Ordinarily, applications for adjournments are not frivolous and are based on some good cause. Affidavits therefore are not necessary to support them. As regards costs, the present practice should be followed.

49. As far as experience goes, suits once commenced are tried continuously from day to day.

50. We are not in a position to give our opinion one way or the other.

51. It is not necessary to give special expedition to commercial suits in the subordinate courts, as we have very few commercial suits in the mofussil.

52. Notice to show cause why execution should not be proceeded with, notice of transfer of decree, notice of payment and warrant for attachment of property should all be issued together and for one date.

Time for proclamation should be reduced to 30 days, as in the case of confirmation of sale.

53. Section 21, Civil Procedure Code, cannot be made applicable to execution proceedings.

54. We see no objection to invest the executing courts, to which a decree has been transferred for execution, with powers which the court that passed the decree has, as to adding of legal representatives and of recognition of assignments, but not those of transfers for execution.

55. We do not see any necessity for changing section 47, as special provisions for such a stranger purchaser have been made in Order 21, rules 97 and 98.

56. It would be hard to reduce the period from 12 years to 6 years. We do not think the present period is responsible for any delay. It is not desirable to put restrictions in the way of litigants with the view of securing speedy disposal of judicial work.

We have to repeat the above with respect to clause (*b*) of the question. It is but just that a person who has got a decree must have his decree satisfied. In this country, where appalling conditions of poverty, ignorance and illiteracy prevail, the harsh rule of requiring vigilance every year would work havoc.

We are of opinion that the starting point for the purposes of limitation should be altered from the date of the last application to the date of the last order on that application.

The suggestion put forward in the concluding portion of the question is useful and may be carried out.

57. We are of opinion that section 57 should be allowed to stand as it is.

58. In the present state of education in the country, and knowing as we do that most of the clients have no business habits and that in very many villages, post offices and registered banks are accessible, if at all, with great difficulty, we feel that the amendment suggested would cause great hardship and innocent persons would be put to unnecessary suffering.

59. There seems to be no objection in allowing the transferee of a decree to conduct the execution of the same, on filing an affidavit by the transferor as to the fact of the transfer. The affidavit would be *primâ facie* evidence of the transfer.

The second proviso to Rule 16 of Order 21 must remain on the principle of contribution to the liability to pay the decretal amount.

60. There is no objection to the deletion of Order 21, Rule 21, altogether.

61. Notice under (*a*) of Rule 22, Order 21, may be dispensed with.

Notice under Order 21, Rule 22, cannot be made part of the notice of execution, as such a notice is not issued on our side, nor is it provided for by Civil Procedure Code.

62. A provision depriving the discretion of the court to order interim stay will work great hardship. No change in the rule is desirable.

63. Special notices in different stages are luxuries. All other notices except the one for attachment should be dispensed with, both on the ground of costs and delay.

64. It is not necessary to supply the judgment-debtor with a copy of the proclamation of sale. Writs of attachment and sale proclamation should not issue simultaneously, because there is every chance of an application being made to raise the attachment.

Notice of execution petition should not be served on the pleader who appeared for the judgment-debtor in the suit, because a pleader cases to be a pleader in the suit the moment the decree is passed.

65. The system of execution of arrest warrants by village officials should not be introduced, because they are partisans of this party or that, and consequently it would cause injustice and great harm.

66. The remedies suggested in the question seem to have been proposed with a view to give a guaranteed clear title to purchasers in court-auction of properties sold in execution of a mortgage decree. We see no reason why the courts should be so solicitous in this case, when they cannot give any such guarantee of title in respect of other sales.

The suggestions themselves are such, which, if given effect to, will cause confusion and delay.

(*a*) Requiring the plaintiff in a petty simple mortgage suit to file an encumbrance certificate is preposterous.

(*b*) Making the persons whose names appear in such a certificate or their legal representatives, parties to such a suit, would lead to multifariousness (suits of various natures included in one suit) which again would lead to different sorts of appeals, arising from the same suit.

Dismissal of suit for non-joinder is absolutely unsound and unthinkable.

(*c*) The suggestion that, at the instance of a third or fourth puisne mortgagee, all prior mortgagees should be settled and paid off, whether the mortgagor and the mortgagee desire it or not, is an undue interference, without any warrant, by the civil courts with the ordinary rights of citizens.

(*d*) It would be unwise to make the puisne and prior encumbrancers lose their security.

(*e*) Too much time is not frequently granted in preliminary decrees in mortgage suits for payment. 6 months' time granted at present is quite appropriate and necessary.

In simple mortgage suits, there is no necessity for a final decree or a separate personal decree. The original decree should embody the personal decree also.

In conclusion we submit that the suggestions put forth throughout the question are not desirable. The present provisions of Order 34 give sufficient option to the mortgagor and the mortgagee to have, if they choose, all the matters adjudicated upon.

67. Orders to stay execution proceedings, made by the appellate court, are not frequently obtained, and consequently no delay is caused thereby in their disposal. The very fact that an apeal is preferred against the judgment of the lower Court is enough to support the statement that applications under Order 41, Rules 5 and 6 are made on sufficient grounds. Moreover, in the judgment of the lower Court, if it is a money decree, further interest is ordinarily granted; if it is a decree about immovable property, mesne profits are granted. The appellate Court again takes security, before ordering stay of execution, from the party asking for it.

68. We think that provisions on the lines suggested should be inserted, but the condition of deposit is not necessary. Provision should be made for security, but the rule should not be very rigid but elastic enough to meet every case.

69. The present law as to insolvency does stand in the way of the decree-holder from getting the fruits of the decree speedily, as the execution is delayed. There is no delay in the disposal of insolvency petitions, nor in the realisation of assets by receivers.

We have at present insolvency petitions tried by the subordinate courts in our province and therefore no devolution of this jurisdiction from the district court is necessary.

70. Execution proceedings are not delayed by absconding judgment-debtors. The present provisions for arrest and attachment before judgment are quite sufficient. In these days, except in exceptional cases, decree-holders are not over-anxious to arrest absconding judgment-debtors. They are quite content to realise what they can by the sale of the judgment-debtor's property.

71. No provision of the Law of Evidence operates to protract trials unduly.

72. The clause regarding the attestation of a mortgage deed by at least two witnesses should be deleted from section 59 of the "Transfer of Property Act." The necessity of proving a mortgage deed by examining an attesting witness will then disappear; the party producing it may prove its execution by any other evidence.

73. We quite agree that the strictness of the rule regarding the reception of secondary evidence may be relaxed to a certain extent. The court may

permit the giving of secondary evidence by consent of parties. This course is likely to save the time of the court as well as expense to the litigants.

74. Section 20 of the Limitation Act, as regards acknowledgment of claims by payment of interest as such, and part payment in the handwriting of the debtor, should be altogether dropped, and a new general section should be substituted in its place, to the effect that any payment towards the satisfaction of the original claim by the debtor should extend the period of limitation.

In article 148 the period allowed for redemption should be reduced to 12 years in the place of 60 years, and the article made co-extensive with article 144.

Article 149 should be dropped altogether. In article 145 the period should be reduced to 12 years in lieu of 30 years.

In article 147 the period should be reduced to 12 years.

In articles 122 and 133 the period should be reduced to 3 years, and in articles 125, 126, 128, and 129 it may be reduced to 6 years.

75. No change in the substantive law should be attempted as it will not tend to the speedy trial of the suits, etc.

76. Partitions of immovable property, if reduced to writing, should be evidenced by registered documents only.

77. We have no objection to a provision requiring compulsory registration of all contractual partnerships, but we suggest very limited fees should be charged therefor.

78. The doctrine of part performance does negative the provisions of the Transfer of Property Act; still we suggest it should be allowed scope in this country. The High Court of Bombay has clearly allowed it, in 23 B. L. R., page 506, at page 509, following the decision of the Privy Council in 17 B. L. Reporter, page 426. There is no difference between the English and the Indian law on this point.

79. The requirement of a registered document as evidence of discharge is quite necessary. On a search being made in the registrar's office, we often find successive documents evidencing various transactions, but we are unable to say which of these transactions are subsisting at a particular time, and which have been discharged, and if discharged, how. In our opinion, registration of discharge at a uniform fee of rupee one would be really useful.

80. We do not at all approve of the suggestion in this question as it will cause great hardship.

81. It is too late in the day to attempt to root out the practice of benami transactions. It is a practice of a very long standing and has been repeatedly recognised by the Privy Council.

As regards the latter part of the question we suggest that transactions referred to in it never occur.

82. We cannot follow what is meant by frivolous suits. Suits generally are not frivolous, but are sometimes false and vexatious; and in such cases remedies have been provided for, in section 35A of Civil Procedure Code.

83. The clause relating to attestation of mortgage bonds by at least two witnesses should be deleted from section 59 of the Transfer of Property Act. We see no justification why any difference should be made between mortgage deeds on the one hand, and sale deeds and leases of equal value on the other.

84. The specific rules of English law as regards maintenance and champerty have not been adopted in British India. We are guided by the principles of those rules as part of the law of "justice, equity and good conscience."

85. It is not desirable to refer the whole case itself, whatever its nature, to referees. The present practice of appointing commissioners from amongst the legal practitioners and other duly qualified persons is found to work well. No other alternative seems to be necessary.

86. Multiplication of law reports in no way interferes with speedy justice. We are of opinion that the six series of the various High Courts, as we get at present, should be printed and published in one book.

87. There is hardly anything to codify except the law of torts and personal law (Hindu and Muhammadan law); the latter two are very difficult to be codified. Codification causes the law to lose its elasticity and creates more intricacies.

Mr. BOMMANJI PESTANJI MESSMAN, Representative of the Poona Bar Association, called and examined on Thursday, the 21st August 1924.

Mr. Gupte.—You are practising in Poona in the district court.

A. Yes.

Q. You have made certain suggestions with regard to service of summons.

A. Yes, in answer to questions Nos. 3, 24 and 25.

Q. Now, there is a suggestion that the plaintiff should get the summons served through the pleader's clerk and that he must be provided for costs. What do you mean by that?

A. Our idea is that instead of serving the summons through the process server or through registered post it would be better if the plaintiff's pleader is permitted to serve through his clerk with the plaintiff. That will require the incurring of special costs and that must be provided for in the costs of the suit. Suppose the plaintiff wins, the defendant must pay.

Q. That will depend on the result of the litigation.

A. In the present civil circular no costs of this kind are provided for. So, we cannot get them.

Q. You mean that they should be included in the bill of costs?

A. Yes.

Dr. DeSouza.—Did you consider what proof would there be of service in such cases, if service of process is made in the way you suggest?

A. There will be the affidavit of the clerk and the affidavit of the plaintiff.

Q. Do you consider that the affidavit of the pleader's clerk will be sufficient?

A. I think so.

Q. What check would there be in the case of suppression of service or fraudulent service, on the part of the pleader's clerk?

A. His being made to give an affidavit is a thing which must prevent him from committing any fraud. He will have to be punished, if anything is found out, under the Penal Code.

Q. In what way would it be quicker than service through the process server?

A. Service through process server is not as satisfactory as it should be. When a plaintiff is to get his costs he will certainly try to serve the summons as early as possible. The process server has got such a lot of work which prevents him many a times from attending to it all at once.

Q. Have you not got a regular system of beats in Poona by which a process server has to visit a beat at least once a week.

A. Yes.

Q. Would it not be possible to have quick service of processes if there is a better and proper supervision over the process servers instead of bringing in a new machinery?

A. I think my suggestion will rather make the service speedier than the ordinary present way of sending through the process server.

Q. Would it be equally reliable?

A. I think so.

Q. That will ensure the pleader's clerks to be of a recognised status. At present he has no status at all.

A. In my district we have got a register of pleader's clerks which is kept in the district court. Nobody can act as clerk unless his name is enrolled in the registers. We have got that system in Poona. He is a sort of man who has been recognised as my clerk by the court. Nobody besides that man can write any petition or application on my behalf or on my client's behalf.

Q. Can you rely on the affidavit of your clerk and guarantee the correctness of the affidavit?

A. Yes.

Mr. Gupte.—*Q.* Does every pleader keep a clerk?

A. Yes, mostly. That depends upon the practice. Some have got one and some two. The new initiates have not got any for the present.

Q. Would it not be better to have the summons served by the pleader's clerk with the assistance of village officials?

A. So far as my experience goes the village officers are the partisans of one faction or other in the village and we generally find it very difficult to have the processes served through them. If you agree to my proposal, then the clerk must go.

Q. I want to combine your suggestion by sending the clerk along with the process server or some independent village official.

A. In many villages there are factions and there will be too many obstacles in the way of serving the process. The village official himself will put obstacles in the way if the man to be served belongs to his party.

Q. That will not be if your clerk goes with the process server.

A. Yes. Then, the village official will have to act properly when there are two independent men to swear against him.

Dr. DeSouza.—Then you will have to get extra clerks for this purpose.

A. Yes. This cannot be carried on with the present establishment.

Q. You want the costs of the employment of this extra clerk to be paid by the other party.

A. Yes. He may have to go by rail or by cart or motor. Whatever conveyance charges and batta, *i.e.*, maintenance charges, are incurred should be paid.

Q. Each process may cost about Rs. 10 to be served.

A. It may be so and it should be paid.

Q. What do you think if the postal and village officials are combined together for service of process?

A. As regards postal service, in my experience on the first day the suit is posted, the postal acknowledgment receipts do not turn up. They come a day or two after the date fixed. When they come it is found that the summons is not served and the suit has again to be postponed. In this way time is wasted.

Mr. Gupte.—*Q.* Will that difficulty not be solved if the defendant is called upon to enter an appearance?

A. That is, I think, done in the Bombay High Court, but that kind of service is not prevailing in my district.

Q. There is a suggestion which I think you will approve of. If the defendant is called upon to state whether he wants to defend or not by entering an appearance after three or four days after service of the summons, and as soon as he enters an appearance, if he is asked to give his registered address, do you think that the whole difficulty will be removed and that will be a very good solution of this problem? Would you adopt that suggestion?

A. I cannot follow how you can get the registered addresses of all the litigants.

Q. No. That is not the idea. The idea is that in the first summons the defendant should be asked whether he wants to defend or not, and if he wants to defend himself, then he must enter an appearance within say six or seven days after the receipt of the summons, and when he enters an appearance, it should be made obligatory on him to give his registered address to the court. If that is done then further notices will be issued to him on that address.

A. Yes, you can do that.

Q. Do you follow me? As soon as he enters an appearance and gives his address, then the further notices can be sent to him on that address. He can be asked to file his written statement on such and such a date and the date of hearing can be fixed thereafter. Would that solve the difficulty? Then there will be no difficulty with regard to adjournments or other difficulties which you have alluded to just now.

A. I think that will do. But the difficulty will be that a majority of them represent themselves by pleaders.

Q. In that case he will give the pleader's address, and throughout the pendency of the suit notices will be issued at that address.

A. We have that in Poona. Once a pleader appears on the other side then all the notices for discovery, inspection or for admission of documents, etc., are given to him and not to the party.

Chairman.—Supposing, on the other hand, there is a notice of appeal, I take it, it is usually served on the client and not on the pleader who appeared in the previous suit, or if there is a notice in execution then it will not be served upon the pleader who was conducting the case before execution. We cannot compel him to give the address of the pleader; let him give his address if he wants to.

A. Yes. But supposing he goes away from the place of which he has given address to the court, then what will be done by the court?

Q. It will be his duty to inform the court of any change in his address. It should be made obligatory upon him to keep the court informed of all changes in his address.

A. If you make that obligatory, I think that will serve well.

Q. We cannot compel him to employ or engage the same man in execution?

A. No.

Q. The only idea is to have the man say what his address is and that he will keep it up-to-date. Is there any hardship in it?

A. I do not think.

Q. Will you now just go back to the point you were talking of. I mean about acknowledgment due coming late. Why does it come late? Is that because the thing is not sent out in time or is it that the postal authorities do not return the summons in time after service?

A. I think both the causes are there. Sometimes summonses are not sent out in time and sometimes they are not returned in time. My complaint is if a summons is served to-day, why the postal authorities should keep the acknowledgment due for ten days? This delay in returning it creates great trouble and we cannot know exactly whether the man has been served or not.

Q. I suppose it must be a bad office management?

A. Yes, that complaint has been made several times.

Q. What is your opinion about postal peons? Do you think that they are corrupt, a bad lot or fairly honest?

A. I cannot make a general statement like that. Everywhere there are black sheep.

Q. Do you think that postal peons make false statements, *i.e.*, they could not find the defendant and so could not serve the notice on him?

A. I would say they can be tempted to do like that.

Q. You mean they are amenable to small gratifications?

A. Yes.

Q. Where is the chief trouble, is it in the service on the defendant, *i.e.*, the defendant bribes the man and he makes a false report or the plaintiff bribes him in order to snatch an *ex parte* decree?

A. The trouble is with regard to the defendant bribing the man. May I suggest something about this?

Q. Yes.

A. There should be a form of affidavit printed on the cover of the process that such and such a man has served the notice and he should swear before the postmaster and the postmaster should then sign it. I think that will remove this difficulty.

Mr. Gupte.—You suggest that a special clerk should be appointed in each court to give intimation of non-service of summonses.

A. The difficulty is this. Papers remain with the sheristadar or the clerk of the court or his assistant and the sheristadar always sits with the judge for taking down depositions and other things and it is very difficult to get intimation unless the sheristadar is present because his subordinates will never show us the papers unless there is some responsible person present. If you appoint a special man to do this work, then he will issue notices to the pleaders that such and such a man has not been served and the summons has been returned unserved. Then we can apply for more time and try to get a fresh notice. At present we get this information only on the date when the case is going to be put before the court.

Chairman.—*Q.* Do they not put that on a notice board stating that such and such summonses have been returned unserved?

A. No.

Q. They do not do anything of the sort?

A. No, until the date of hearing we don't know what happened to a particular summons.

Mr. Gupte.—*Q.* Do they not put on the notice board a notice saying that so many summonses have been served?

A. No.

Q. Would it not meet your suggestion if lists are put up every day?

A. Yes, if they are put every day on the notice board we shall be able to see them daily.

Chairman.—That will be more convenient.

A. Certainly.

Mr. Gupte.—If you put it in that form the court shall arrange to put up the lists on the notice board.

A. That will require a special man. About 50—60 summonses are returned daily unserved.

Chairman.—*Q.* I see you say that a copy, under the signature of the pleader, of documents should be supplied to the other side. It is very difficult in mofussil courts where neither the judge nor the parties have properly readable copies of the material. Would you like to see that improved? Do you think that it ought to be the business of the pleader to supply the court with copies to work upon?

A. That means expense. Our idea is to supply the copies together with the pleadings. Kindly read my answer to question No. 24.

"In suits in which summons for final disposal is to issue, the plaintiff should be required to file along with the plaint, affidavits as regards the proof of his claim and all documents. It should also be made incumbent upon him to serve the summons on the defendant, ten days before the date fixed for hearing."

Our idea is to place on the file the copies together with the pleadings. Suppose I file a suit to-morrow on a bond—a simple mortgage bond—or a promissory note, then what I would do is to present the plaint together with two or three copies of the promissory note, affidavit of the man, etc., and all these things I would serve upon the defendant so that if he wishes to file his written statement he may come prepared with the written statement and any affidavit which he wishes to make as regards the document which is in suit.

Mr. Gupte.—*Q.* But will this not disclose the evidence of one party to the other?

A. I am speaking about the documents only and not about other things. The writer and the witnesses, etc., should be summoned afterwards.

Q. This procedure will affect the costs. Would you reserve this affidavit after the defendant makes his mind to defend or not?

A. It will be a small cost but it will save time.

Q. At the same time will it not enable the defendant to modify his defence?

A. This will only be about the execution of the documents. If it be in a contested suit the affidavit will rather be a dangerous thing.

Q. I will now come to question about the recruitment of the judges. Are there Bar Associations throughout the Presidency in every district?

A. I am not aware of it.

Q. You suggest that selection should be made by the Bar Associations.

A. Yes, because I think where there is a Bar Association—small or large—it will work as a check upon the pleaders who are members of the Bar.

Q. Would you not consider it more desirable if the district judges should have a hand in the matter?

A. Subordinate courts are often far away from the District Judge and those who are practising in these subordinate courts have a very little chance of coming into contact with the district judge unless the district judge goes there for inspection.

Q. I will now refer to questions 12 and 13. In your district is the time of the district judge wholly occupied with court work or administrative work?

A. He has to go out for inspection of the subordinate courts.

Chairman.—*Q.* How long does he take to go through his office work—chamber work?

A. About half an hour or an hour at the most.

Mr. Gupte.—*Q.* Is he fully occupied with the court work for the rest of the day?

A. Yes, so far as I know. There are many land reference cases pending in Poona for the last five years or so.

Chairman.—Are they being dealt with?

A. Yes, they are dealt with in groups.

Q. They don't take five years or so?

A. No, they usually take 8 to 12 months. They come in time.

Mr. Gupte.—*Q.* What about the state of appeals in your district? Are the appeals disposed of within reasonable time?

A. Yes. We have got two assistants and one of them is taking up appeals. We are now doing 1923 appeals.

Q. You object to the introduction of summary procedure. Do you not think that in places of importance, like Poona, where there is advance of commerce now, the introduction of summary procedure with reasonable safeguards will be desirable in the interest of the commercial community?

A. We have got very few commercial suits, and to have summary procedure, provided in Order 37, will surely work hardship in Poona.

Q. Take for instance the banks in Poona?

A. We have got only two or three banks doing very little business. The best bank is the Imperial Bank.

Q. What about suits on negotiable instruments and promissory notes?

A. The difficulty is, what are the safeguards? If you want security for the whole amount you will be withholding justice from the poor people.

Chairman.—But the man has got no defence. The point of the summary procedure is that the plaintiff shall not be delayed if he has really no defence. If the defendant swears to some amount, well and good, but if he cannot swear, then the whole burden of proof is upon him. It is done in all the High Courts, and it has been done in England for years and years.

A. If there be no defence the court passes the decree at once. If there be any shadow of defence then the court gives the defendant only one adjournment and finishes up the case, and it is disposed of within three or four months of its institution.

Q. Why should the man have four months if he has only a shadow of defence?

A. If it is seen the court never gives them an opportunity and it passes the decree at once.

Mr. Gupte.—*Q.* In the High Court a man suing on a promissory note gets a decree within three or four months. Why does it take more in the Poona courts?

A. I would like to know the safeguards. If it is found that there is no defence the court passes the decree immediately.

Chairman.—If a man signs a promissory note he cannot dispute his signature. The man is in business and executes a promissory note and afterwards he says that he cannot find the money.

A. He has to pay one day or the other. My experience goes to show that it is difficult to get security from the clients. My country is not very flourishing, there is no trade, and commercial cases are very few.

Dr. DeSouza.—*Q.* You have several banks?

A. There are three banks and if there is any bank worth mentioning from the business point of view it is the Imperial Bank.

Q. Do you not get many cases from the banks?

A. Banks are very rarely clients there.

Mr. Gupte.—As regards appeals you say that power under Order XLI, rule 11, is freely exercised in your district.

A. I should say that it is rigidly exercised. In fact out of 100 nearly 75 or 80 appeals are put under Order XLI, rule 11, for admission and if the court holds that there is nothing in the appeal it is weeded out.

Chairman.—*Q.* What percentage of those posted for admission under Order XLI, rule 11, are ultimately rejected summarily?

A. I cannot give the figures, but they are not many.

Q. At any rate they do their best to prevent even first appeals?

A. The first appeals are not admitted by way of right.

Dr. DeSouza.—*Q.* Since this system is somewhat preculiar to Bombay—I find that the district courts generally exercise this power—will you explain to the Committee the system which is followed by the district courts in fixing appeals under Order XLI, rule 11. What sort of appeals are selected for admission under that section, and how are they classified?

A. Generally the presiding judge goes through the memorandum of appeal and he decides whether it should be admitted for hearing under Order XLI, rule 11.

Q. Well of course it is not the presiding judge because he has no time.

A. When we present urgent appeals, the judge looks through them.

Q. What sort of appeals are fixed under Order XLI, rule 11?

A. Those relating to bonds and mortgage deeds.

Q. Those where the question is whether the bond is proved or not, suits on mortgage deeds and suits against orders in execution proceedings, and any other class that you can remember?

A. I do not practise there myself. These are what I know.

Q. What happens in those appeals which are fixed under Order XLI, rule 11—the record is sent for?

A. Yes, immediately.

Q. And then the pleader is heard?

A. Yes.

Q. In some provinces it was urged that it really takes the judge's time twice over to hear the same matter over again, if he admits the appeal.

A. That depends upon how matters are placed before the judge, and the calibre of the judge. Sometime he may immediately change his mind, after hearing the arguments of the pleader, and think that it is worth while admitting, and sometime, when he is not satisfied, he goes on tickling the matter before admission.

Q. Some judges consider it against first principles to dismiss summarily the first appeal which is not only on question of law but also on question of facts. They seem to think that the court of appeal should always give a chance to the respondent before coming to a decision. Have you found that in exercise of jurisdiction under Order XLI, rule 11, there is really any cause for saying that proper care has not been exercised and that justice has not been done?

A. I have not heard of that.

Q. Is not that the complaint of the Poona Bar?

A. I do not think so. There is no complaint that any appeal has been dismissed without giving a proper hearing or satisfaction.

Mr. Gupte.—*Q*. Are the provisions of the Civil Procedure Code as regards discovery and inspection followed in your district?

A. They are not mostly followed. If a special date is appointed by the judges for that, that could be very easily followed.

Chairman.—*Q*. Special date for what?

A. Suppose the issues are framed. Then the question of discovery or admission of documents should come up. In my court when there are many exhibits, such a date is fixed. If it is done as a general rule, the matter would be more simplified.

Q. You would fix another date in order that if anybody wants to make an application for discovery, he will have an opportunity to do that.

A. Yes.

Mr. Gupte.—*Q*. Would it not be more convenient if the pleader for the plaintiff should be made to apply to the judge as soon as the written statement is filed? In that case it will not be necessary to fix a date for that purpose in every case.

A. That is not generally done. If a date is fixed he will be made to do it.

Q. Here in the High Court after the written statement is filed, the order for discovery or inspection is made. The plaintiff's pleader applies to the attorney and you make an affidavit. Of course that can be done without the order of the court. In cases where they would not do it, then you have to present an application to the judge in chambers to call on the other side to do an act which has not been done. If you adopt a procedure similar to that as soon as the pleadings are complete, the pleaders can call on the other side to make their affidavit of documents and ask for inspection. If that is not done, then you may go to court.

A. That is not the present practice prevailing in Poona. If you want to introduce this practice there, I think it is necessary to adopt my procedure for some time so as to make the clients vigilant about these rights.

Dr. DeSouza.—Q. Do you think the parties in the mofussil will willingly disclose their documents at that stage or is there a tendency to keep back the documents as long as the law allows them?

A. In some cases it does happen. It all depends upon the rule made by the presiding judge. Some judges make it a rule that all the documents must be filed before the issues are framed. Others even take it at a late stage. Perhaps there may be a registered copy of the documents. Such documents alone are permitted at a late stage. The others as a rule are not permitted.

Q. Now, the plaintiff should produce all his documents with his plaint under Order VII, rules 14 and 16, and the defendant should produce all his documents along with the written statement. When once these documents are produced you are aware that a great deal of time has to be spent at the trial in proving these documents merely formally. Some of them may be admitted and yet the law requires them to be formally proved. Can you not stop that sort of procedure and curtail the amount of evidence by insisting that each side should serve a notice on the other side under Order XII, rule 12, to admit such documents as he is prepared to admit so that the uncontested documents may at least be admitted and evidence to that extent curtailed.

A. That procedure is adopted in many cases.

Q. Is that adopted now?

A. Yes. About execution of documents each side admits on notice given by the other side. Sometimes notice is given and sometimes the court itself fixes a date for admission of documents.

Q. You would be in favour of a more general application. Now some judges do that and some judges don't do that.

A. In my experience it is generally done.

Chairman.—Q. Is great care taken in your part of the world as regards settlement of issues?

A. Yes.

Q. At that time does the judge go into the pleadings and try to see that the suggested issues do really arise and try to keep them down to the real points?

A. Yes.

Dr. DeSouza.—Q. Is it not a fact that the pleaders put in the draft issues and that the judge generally accepts them?

A. Yes. But, if he thinks the issues suggested by either side are not properly framed, then he calls upon them on the day of fixing the issues to explain why such and such an issue was framed in such and such a manner.

Q. Have you got a special date for the settlement of issues? Issues are not settled in each suit as it comes on, but a special date is fixed for them?

A. No, one day is not appointed for the settlement of issues in all the cases. It depends upon the stage of the suit. The court does not fix the whole day for the settlement of issues. When the proper stage comes then the pleaders are called upon and the court goes through the pleadings. If the court finds them all well and good, it signs, but if there is any difference with regard to the frame of issues, or the burden of proof is wrongly thrown, then the court calls upon the pleaders and settles the issues itself.

Q. How long after the settlement of issues does the trial take place?

A. It takes a little time and there are reasons for it. Generally four or five weeks' time is given, but on the date fixed there may be old cases and this may have to wait its own turn.

Chairman.—*Q.* How many cases are posted for hearing on one day? I mean how many cases are fixed on which the parties are supposed to be ready with their witnesses?

A. Generally 20 to 40 cases are fixed for one date and the list contains all kinds of things, *i.e.*, issues, summonses and so on. About four or five contested cases are fixed on one day.

Q. Does it not mean that the man who is at the bottom of the list of five contested cases has got the least chance of being taken up on that day? Considering this he does not bring his witnesses and goes on doing like this for four or five times. Does not that happen often?

A. It does happen sometimes.

Q. Is not that a matter which the judges should stop by taking a little more trouble in posting cases?

A. The file is very heavy and it is very difficult to know whether the case will be taken up immediately on that date.

Q. When you cannot hear a case, say, for two months, where is the necessity or what is the advantage in giving intervening dates and making the parties come with their witnesses every time?

A. There is no advantage in it.

Mr. Justice Stuart.—*Q.* Why cannot a man fix a date on which he is going to hear a suit instead of fixing dates on which he knows he will not be able to hear it?

A. We have received circulars and six weeks' intervals have been fixed for adjournments.

Q. When you fix a date in a contested case, for dissolution of partnership, how many years will it take to get a decision?

A. If it is hotly contested, it will take nearly two years.

Q. I find that a much simpler case in the subordinate judge's court at Poona has taken nearly two and a half years. The case was on a promissory note. Execution was admitted and receipt of consideration was denied. It was filed in April 1915 and was decided in November 1917. It was a very simple case and had it been a difficult case it would have taken more than 2½ years. Is that not so?

A. At that time, so far as I remember, there was one original sub-judge and he had one assistant, but now there is one original sub-judge and four assistants and they are doing work more quickly than it was being done before. This case might have been an exceptional case.

Q. How long after a case is filed is the first witness likely to be heard?

A. It will not take years. It depends upon the turn of the case.

Q. How long does it ordinarily take?

A. Ordinarily it takes about a year.

Q. Then what object is there in fixing so many intervening dates?

No reply.

Dr. DeSouza.—Surely they have got the system of *sine die* list. If there is a prospective list, there is no need of putting the cases on the hearing list. My point is, why should there be such a thing as this? You say contested cases are fixed for a certain date and the witnesses are told to be present on that date, and yet you say the judge knows he has no chance of reaching that case.

A. On the morning when he comes to court, he takes up the statement which has been prepared for the day and then sees whether the case can be taken or not.

Q. But why should not the judge exercise a little foresight in fixing cases? Do you not think that he cannot take up five contested cases on one day?

A. Out of these five cases, two may be cases on promissory notes and one other case may be very simple.

Q. But why does he fix so many cases when there is no likelihood of their being taken up?

A. Because his hands are tied.

Q. Who ties his hands?

A. Civil circulars because they say that when you adjourn a case, you should not adjourn it for longer than six weeks. When cases are taken up from the *sine die* list dates are given in order, but when once they are on the board and for some reason or other they are postponed once or twice, then there comes the difficulty.

Mr. Justice Stuart.—*Q.* When a case comes on for evidence, is it the rule in Poona to hear it from day to day or hear a little evidence on one day, adjourn it for two months and hear a little more on the next day?

A. The general rule is to hear it from day to day.

Q. This promissory note case was instituted on the 11th April 1915, some evidence was taken on the 31st August 1915, some evidence was taken in 1916 and some evidence was taken in 1917; on the 16th October 1917 one more witness was examined and on the 15th October another witness was examined. Now was that case an exception?

A. I think so.

Q. I have got another case. This was a case in the court of the Additional Subordinate Judge at Poona. I have made some notes as to when the evidence was taken in this case. This case was instituted on the 14th April 1913 and was decided on the 15th October 1917. Some witnesses in the case were heard on the 25th June 1915, some on the 27th June 1916, some on the 29th March 1917, some on the 30th March 1917 and some more on the 8th, 9th and 11th June 1917. The rest of the evidence was heard on the 16th July 1917 and the decision was given on 15th October 1917. Do I understand you to say that this sort of thing has now come to an end in Poona?

A. These are exceptions.

Q. Do you think that the work is done better now?

A. Yes, because we have got many assistants now.

Mr. Gupte.—*Q.* About the execution proceedings are they done in reasonable time? Do the litigants get the fruits of their litigation in due course of time?

A. May I know the meaning of the fruits of litigation?

Q. After the decree-holder puts in his application how long does it usually take?

A. That depends upon the circumstances.

Q. Take the money decrees. How long does it take to get process issued by the court after the application is made?

A. No unnatural delay. About a month is taken.

Q. Have you any suggestion to expedite these matters?

A. We have already suggested something as regards this. We wish some notices to be done away with. Notice of attachment must be accompanied with previous notices and I think we have made a suggestion to this effect.

Q. You refer to question No. 63?

A. No, there is another particular point. I refer to question 52.

"Notice to show cause why execution should not be proceeded with, notice of transfer of decree, notice of payment and warrant for attachment of property should all be issued together and for one date."

This takes three stages.

Q. At present they take three stages?

A. Yes.

Q. As regards question 58 you suggest that the adjustment should not be recorded by the sub-registrars. What is your objection for adopting that course?

A. That requires expense. A sub-registrar would not certify unless he is paid something. If you fix a nominal fee it will do well, and if it be a regular fee it will be heavy.

Q. What objection have you against the registered banks?

A. We have made an objection to the effect that they are not available in the Poona district.

Q. They may not be available in your district but where they are don't you think that that would be a safeguard?

A. We have given our answer in the negative only on the ground of costs.

Q. You think it would be better if the sub-registrars are given this duty on payment of a nominal fee?

A. Yes, four annas or eight annas will do. If it is done it will be a good thing.

Chairman.—*Q.* As regards the proclamation you say there is no need for a copy of proclamation of sale and for its going to the debtor.

A. No, it is not done.

Q. What is done in your part about the fixing of valuation of the property?

A. The nazir or some responsible officer who keeps all the money, etc., goes there or sometimes sends an experienced bailiff. He makes inquiries from the people in the vicinity and asks them to settle or fix the price of the property and then he writes the opinion arrived at and this is called *Panchnama*. Then this *Panchnama* is considered as a sort of standard as to the value of the property.

Q. The court gets that as a sort of report and acts according to that report.

A. Yes, he does not go himself to the spot.

Q. Do you know of any case in which the plaintiff says so much and the judgment-debtor says so much?

A. I don't know.

Q. Do you know that this question creates a lot of trouble? One feels much difficulty in calling a lot of conflicting evidence. Do you think you get cases like that?

A. Not many, very very few.

Q. But that part of the thing works well in your district?

A. Because consensus of opinion of neighbours is taken and that is the proper guide in a way.

Q. You think that it is very well. Have you ever thought over the question of second appeals in this High Court?

A. No. I have no experience because I do not practise there.

Q. What I mean is this. You may get very important consequences attaching to litigation which may be valued for the purpose of jurisdiction at quite a low figure, say Rs. 500. An appeal may be valued Rs. 500 or less and yet there may be an important point. Therefore it does not seem to be practicable to take the valuation figure, and what we do at present is that we allow all appeals on points of law, whatever their value, and then we try to get rid of worst of them, under Order XLI, rule 11, and a tremendous number is thrown out under that. While it does a certain amount of hardship to the court, it does not hurt the respondent because he is not put to any more expenses. If you look up the appeals that are admitted under Order XLI, rule 11, and what proportion of these are ultimately thrown out, have you any idea how many come to nothing in the end?

A. I have no idea.

Q. If you take 25 per cent. as a figure which will cover cases where the decree of the court below is reversed or the suit is remanded, or where there is any kind of modification, you will take the representative figure. The court hears a hundred cases for the third time in order to correct 25. Do you not think that probably rather stricter scrutiny than is possible under Order XLI, rule 11, might be given to these second appeals, so many of which come to nothing? Do you think, perhaps, that instead of letting in anything because there is what is called an arguable point of law, the burden should be on the other side and that the man should have the right of second appeal on points of law by leave and by satisfying the judge of the High Court that the case requires a third hearing? In the interests of justice do you think that it will be too hard on the litigants? Do you not think that it will be rather fair to the respondent?

A. It will work hardship. I think Order XLI, rule 11, is a sufficient safeguard because unless the presiding judge thinks that it is worth admitting, he would not admit it.

Q. Order XLI, rule 11, sets no standard?

A. It is left to the discretion of the presiding judge.

Q. Yes, but what I am suggesting is that if you look up the figures, you find that too many cases seem to result in hardship to the respondents. It is difficult to throw out an appeal under Order XLI, rule 11, if there is a point of law, even if the judge below may be correct. Do you think that Order XLI, rule 11, is good enough in principle, but it does not give a high enough and a definite enough standard? What I would like to do is something that I can fairly do for these 75 respondents. There may be a case worth only a couple of hundred rupees and though there may be no point of importance in it, yet it is brought to the central court of the province and fought out for the third time, apart from altogether taking three years to settle. I notice that your association says that they do not like any curtailment of the right of appeal and perhaps you would like to consider this point?

A. Yes. I cannot give any opinion because I have not thought over the matter.

Mr. F. W. ALLISON, I.C.S., District Judge, Ahmednagar.

Written statement.

1. Original suits in district courts are, as a rule, very few. I should say at the most 3 or 4 a year on an average in an ordinary district court. These are generally suits to which Government is a party, and are usually important and complicated. It is impossible to lay down any general average period, which might be regarded as satisfactory for their disposal.

As to regular appeals, I should consider that in all conditions which exist, an average period of 8 or 9 months for all contested appeals would be quite satisfactory. The actual average in my court for the last 5 years has been 10 months and 13 days.

Miscellaneous appeals against orders should take a shorter time, say, on an average 4 or 5 months.

I take it that district munsifs' courts are the same as the subordinate courts as they exist in this Presidency. Here again I should be satisfied with an average of 8 months for suits on title or rent, and 5 or 6 months for money suits, say, an average of 7 months for all contested suits.

Under the Deccan Agriculturists' Relief Act there are no small cause courts in the Deccan districts proper. I know very little personally of their working in other districts, and any opinion I could give would be merely founded on statistical tables, and would be of no particular value.

I am unable to suggest as reasonable any average period for the disposal of applications in execution. The period naturally differs greatly according as the applications relate to movable or immovable property, and what is more important, a majority of the *darkhasts* filed are, and are meant to be, infructuous. These are filed simply for the purpose of keeping the decrees alive.

2 and 3. The average duration of civil appeals and of original suits in most cases exceeds by far the periods I have suggested for reasons to which I will refer later on. I give the average figures for the last 5 years for my district showing the duration of contested civil appeals in the district court, and of contested suits in the subordinate courts:—

District court contested appeals average 10 months, 13 days.

Subordinate courts; contested suits:—

First class court, Nagar, 13 months.
Sangamner court, 5 months, 3 days.
Shevgaon court, 8 months.
Nevasa court, 10 months.
Rahuri court, 6 months, 23 days.
Kopargaon court, 8 months, 3 days.
Karjat court, 8 months, 25 days.
Jamkhed court, 9 months, 27 days.
Parner court, 7 months, 23 days.

The figures from most of the districts in this Presidency compare unfavourably with these. The reason is that in this district there are very nearly as many subordinate judges as a reasonable observer would consider sufficient to deal efficiently and promptly with all the work, which comes before the courts.

I would say at once that in my opinion nearly the whole of the delay in civil judicial work in this Presidency arises from two causes outside the scope of this Committee.

First, there are not nearly enough judges. The figures of one or two of the subordinate courts in my district as shown in the last paragraph indicate that an energetic subordinate judge, provided that he is not overworked, can even under present conditions dispose of his suits in a perfectly reasonable time.

The second cause is the state of the mind of the litigating public and of the pleaders. I say nothing about the Presidency-towns, but as regards the mofussil courts of which I know anything, I say confidently that public opinion in general does not, in fact, consider that there is at present any inordinate delay at all in the disposal of judicial work. I think that litigants in general, whatever their prospects of success or the reverse, prefer that the disposal of their cases should be postponed, and in the same way most pleaders, in my opinion, are indifferent as to whether their suits are delayed or not.

For these reasons, I respectfully submit that while a very few of the suggestions made are practically worth considering, I am not enthusiastic about any of them.

As it might possibly be of some use to the Committee, I have given my opinion on many of the suggestions made. I have done so after consulting the experienced subordinate judges in my district and also the registrar of this court.

If Government will appoint enough judges any pressing need for the suggested changes will disappear. If Government will not do this, the suggested changes will not noticeably affect the arrears in the courts. I have a wide personal knowledge of the subordinate judges in this Presidency

obtained during the 5 years in which I was registrar of the High Court, and in my opinion, as a class, they are a hard-working body of men, who conscientiously do as much work as they can. The amount of work they can do is limited, and very few of the suggestions made will save actual time in courts. If then some cases are expedited, others, which might have been heard instead, will have to stand over.

With all respect, I submit my opinion that if Government wish to do away with the excessive delay, which does exist in most districts, the only remedy worth taking seriously is the appointment of more judges.

I make one suggestion here, which, in my opinion, is of real value. I would supply a shorthand writer to every first class subordinate judge and to every second class subordinate judge, who has served as such for 5 years. During the last 3 or 4 years shorthand writers have been supplied to the district judges, and every district judge will agree that this has considerably increased the amount of work that he can deal with. Writing judgments laboriously by hand takes up not only the time, but also the physical energy of a judge, and this is unnecessary when shorthand writers can now be so easily obtained.

I will here offer a few remarks about bailiffs, in whose hands is, in practice, most of the actual work of execution and most of the work of serving processes. These bailiffs in each court work under the superintendence of a clerk called the nazir, and of course under the orders of the subordinate judge. In former years they were very badly paid, and there was no attempt at local supervision or checking of their work. Not unnaturally they were corrupt and it was possible and usual for a defendant or a judgment-debtor by giving a small bribe to avoid service of summons or to bring about late execution. In the same way a plaintiff or decree-holder by giving a similar bribe could obtain what he wanted, and often get the work done in his case and if the process was not served it was not difficult to induce the bailiff to swear that it has been served. Also, the bailiffs themselves were lazy and would often pretend that they had gone to distant villages to perform their duties, whereas really they had not gone there at all. The net result was enormous delay in judicial work, because processes had not been served, and delay equally scandalous in execution matters.

Several measures were devised to improve this state of things. After a very long period of years the proposal to increase the pay of the bailiffs was at last carried into effect a few months ago. Bailiffs are now reasonably well paid and have fair prospects of promotion. It would be possible to obtain men of a higher class and high character, and in this way a considerable improvement may be looked forward to very shortly.

The nazirs in subordinate courts, as a rule, were not able to exercise any effective supervision over the bailiffs, because they were simply promoted clerks and did not understand the bailiffs' work, and had neither the knowledge nor the desire to exercise an efficient supervision. One valuable rule was that these nazirs should tour for ten days every month and check the work which the bailiffs had been doing in the villages. Another and perhaps more important arrangement was that the deputy nazir of the district court should also work as inspector of bailiffs and tour in the district for a part of his time with the special object of checking the bailiffs' work. The deputy nazir is a senior officer who generally holds the appointment for a long time and as soon as he gained the requisite experience he was able to exercise a fairly efficient supervision and the fact that this officer might at any time go to any particular village and find out any default of a bailiff was itself a salutary spur to all the bailiffs.

The result of these two arrangements was a marked improvement in the general work of the bailiffs, and these continued till 1918. In that year owing to financial stringency, the deputy nazir of the district court was ordered not to tour for the special purpose of inspecting the bailiffs' work. Later, for the same reason the tours of nazirs of subordinate courts were stopped, and

finally from motives of economy Government have abolished the separate posts of nazirs in all linked courts. The natural result is that in the last few years there has been a very marked deterioration in the bailiffs' work For instance, in this district, during the last two years, only 66 per cent. of processes issued have been returned served. Of course there are other contributory causes, as, for instance, the migration of the agricultural population during years of scarcity, but there can be no doubt that the principal reason is that at present there is practically no local supervision over the bailiffs' work at all.

The subordinate judge fails to exercise any real supervision, because he ordinarily gives all his attention to his purely judicial work thinking that his advancement and reputation depends on how he performs that work. A district judge can do some good in this respect by discussing the records of the bailiffs' work in detail with the subordinate judge at the time of inspection, and by impressing it on the subordinate judge that it is an important part of his duty to give more personal attention to the work of the bailiffs. When subordinate judges realize that the interest they take in this work will influence the opinion which the district judge forms of them, it may be expected that they will display the increased influence. .

What is really needed, however, is renewed and increased local supervision. I think it false economy to do away with the tour of the deputy nazir of the district court, and I think it would pay in the end to have a special officer of the status of the deputy nazir to spend his whole time in touring through the district checking the bailiffs' work, and actually supervising the execution proceedings.

4. I do not think any alteration necessary. There is no connection between the method of recruitment and the delay complained of.

5. At present subordinate judges are ordinarily selected from graduates in law who have practised as pleaders in a civil court for at least three years. After selection they remain on probation for two years, and very often during that period are appointed joint subordinate judges, and so have at hand an experienced judge, whom they can consult for advice or assistance when necessary. In my opinion, it would be a good thing if a probationer were made to sit constantly with the first class subordinate judge for six months to watch the disposal of his work, and to make notes on the same for his approval. In this way he would best acquire a practical knowledge of the procedure of the courts, and of the way in which suits should be disposed of.

6. Not at all in this Presidency, at any rate in recent years.

7. I do not think it is possible to fix a standard of efficiency of a judicial officer on the basis of the outturn of work done by him. It mainly depends on the state of the file, the nature of the proceedings, and on the habits and customs of the people—which conditions will naturally vary in different courts. An experienced district judge can form a fair opinion of how efficient a subordinate judge is. No other test is of any real value.

8. Concentration of many courts is possible only at district towns, where of course there are also several magisterial courts. In practice, work suffers very little from this cause in the district court which has the first claim on a pleader's attendance. With regard to the other courts it is largely a matter of foresight and arrangement. If a particular pleader is not present there is usually some other work which can be taken up.

9. I do not think any change is needed—at any rate so far as this district is concerned.

10. I do not think this is necessary.

11. I do not think this is necessary.

12. (*a*) In the average district court the miscellaneous applications which take up most time are those under the Guardian and Wards Act. I would transfer all these to the subordinate courts (unless perhaps if the estate were worth more than Rs. 10,000). Subordinate judges are quite competent to

decide these matters, especially in view of their greater intimacy with local conditions. The administration of estates of which the deputy nazir might be appointed guardian would remain with the district court.

(*b*) The appointment of gazetted officers as registrars of district courts was a great relief to district judges as the registrars were empowered to dispose of, or prepare for the orders of the judge, many details of administration. These registrars have been abolished, excepting in my own court, on account of financial stringency. I hope they will soon be re-appointed.

13. Probate, succession certificate and land acquisition proceedings are very important and I would prefer to leave them with the district court. I think public opinion would prefer this.

I would suggest in this connection that suits on behalf of and against Government should be made over to subordinate judges for trial. In all presidencies except Bombay such suits are tried by subordinate judges.

A bill was recently introduced in the local Council but was rejected though not from opposition to the principle involved.

14. There are at present 22 village munsifs in the district with powers under section 35 of the Deccan Agriculturists' Relief Act. They try suits for the recovery of money alleged to be due to plaintiff when the amount does not exceed Rs. 10, and when all the defendants are residing within the area of the village munsif's place. With regard to such suits they have exclusive jurisdiction.

The total number of suits filed during the last 10 years is 11,771 or an average of 1,177 per year. There has been a marked decline since 1916. Last year the number was only 783. I think the decline is largely due to high prices and the decreased value of money which makes claims of under Rs. 10 less frequent.

In the rules framed by Government for the guidance of village munsifs under section 37 of the Deccan Agriculturists' Relief Act a village munsif is required by rule 5 to fix a convenient day for trial of a suit *within 7 days* from date of its institution. In other rules also, promptness in the disposal of the proceedings is enjoined. In view of this, and also from the simplicity of the procedure and village conditions, and the fact that defendants must all be residents of the same place, there is generally no undue delay. The district judge examines the *daftars* of all village munsifs in the taluka, during the inspection of a subordinate court. I have noticed that the suits are generally disposed of within a month: occasionally a longer time is taken—about two months.

I would recommend that claims up to rupees 20 or even rupees 25 should be brought within the jurisdiction of village munsifs. Then probably the pre-war institution would be equalled or even exceeded.

16. (*a*) This proposal is not practicable in this district so long as sections 7 and 12 of the Deccan Agriculturists' Relief Act remain in force. I do not think the proposal suitable for agricultural districts.

18. The standard of subordinate judges has been raised very considerably in the last few years: but I would not curtail the right to appeal at present. I do not think it is abused to any material extent.

22 In my opinion, yes.

24. I would make the following suggestions:—

(*a*) No proof of a registered document need be asked for, unless the execution thereof is specifically denied. In most of the cases parties allege that they have knowledge of the execution of the document. In such cases proof need not be called for. Registration should be treated as sufficient proof. This will obviate the necessity of citing witnesses to prove it. There is no doubt that such evidence does not take up much time of the court. But delay arises sometimes in securing its presence in court.

(*b*) Secondary evidence of registered documents should be admitted as a matter of course if there is no other objection to it. (Section 65 of the Evidence Act should be modified so far.)

(*c*) At present an attesting witness must be examined to prove a mortgage deed in view of section 68 of the Evidence Act. This should be dispensed with unless execution is expressly challenged.

(*d*) Courts should have power to award special amount as costs of adjournment. An application with a court fee stamp of two or eight annas and subsistence allowance to some witnesses are not sufficient to prevent a party from asking for an adjournment on frivolous grounds.

I would remark here, though it is scarcely a matter of procedure, that in the past much delay was caused by subordinate judges allowing adjournments without reasonable grounds. Experience shows a considerable improvement in this respect within the last few years. This is largely due to the educational effect of an efficient inspection of each court by the district judge. Now-a-days it is the rule at such inspections to test a considerable number of instances in which adjournment has been allowed, and if necessary to ask for a personal explanation from the subordinate judge on the spot. A district judge can do a good deal in this way to impress on a subordinate judge his duty in this regard: and if in appeal he finally supports the subordinate judge who has refused an adjournment unless very good grounds for interference are shown, delays from this cause will diminish very greatly.

25. I am not in favour of this proposal, at any rate in agricultural districts. In times of famine or when there is a great demand for labour, an agriculturist often leaves his house without any idea of avoiding service, for months together. If he leaves his family behind they probably could not or would not send on the notice to him. If the notice was fixed to his house, he would never know of it. The Code provides a sufficient remedy if the court is satisfied that he is wilfully evading service.

26. The forms of plaints given in Civil Procedure Code are generally adhered to at any rate in substance. Where this is not done, the proper course would be to call upon the plaintiff to amend the plaint within a time to be fixed by the court and in default to reject it. An appropriate clause to this effect may be added to rule 11 of Order VII of the Civil Procedure Code.

27. All the provisions of Orders VII and VIII of the Civil Procedure Code are generally followed in the courts in this district. The exceptions are Rules 14 and 15 of Order VII which are not always strictly observed. Such cases are noticed from time to time but are becoming fewer.

28. I am personally against the use of postal agency for service. It is doubtful whether in cases where the packets containing the summonses or notices are returned as "refused by the addressees" it would be safe to accept the service as good.

I would not entrust the service of process to the village officials who, as experience shows, have ordinarily no sympathy towards the civil courts. If at all they are entrusted with this work the subordinate judges must be invested with disciplinary powers over them, and this I think is not practicable.

29. I am not in favour of this proposal either, at any rate outside district headquarter towns. In the ordinary Deccan village there is no guarantee that an addressee will receive a letter and an endorsement that it has been refused and returned would not convince me that the addressee had ever seen the letter.

31. I think that the Civil Procedure Code coupled with the Evidence Act gives sufficient instructions in abstract form in the matter of framing issues. So far as I know there have been very few cases indeed in which the appellate courts had to remand cases to the lower courts on the ground of the issues having been wrongly framed.

32. I find that subordinate judges vary with regard to the use of Order X. Some rarely act on it, others observe it when the pleadings are not clear. An improvement in this respect may be looked for as the result of court inspections.

The provisions of Orders XI and XII are very seldom used and this is due to want of diligence on the part of parties and their pleaders. They think they will be able to get what they desire at the time of hearing the evidence. The use of these provisions ought to be of great help. It has been suggested that some penalty should be laid down. For instance a party should not be allowed to ask the opponent to produce documents or account books at the time of hearing and should not be allowed to refer to them, if it had been possible for them to apply for inspection and if they did not avail themselves of it. As regards admissions, courts have even now power to throw the cost of proving a document on the party relying upon it, if the court finds that this result could have been secured by a motion for admitting. But in disposing of the suit finally, courts are apt to lose sight of such points.

33. The proposal is not a new one and there is something to be said for it. Some of my subordinate judges are in favour of it. I personally am against the proposal because if parties are examined in full at first, the danger is that their case will be disclosed to the other side to their manifest disadvantage, and this danger is perhaps greater in India than in other countries where the moral standard of witnesses is perhaps higher.

34. The practice in the subordinate courts in this connection, which is based on rule 61 (pages 20 and 21) of Chapter I of the Manual of Bombay High Court Circulars, is that the witness concerned is, at the instance of the party who has cited him, served with an order for re-attendance. This question, therefore, does not arise in this Presidency.

35. In these courts the parties in some cases are found to cite a large number of witnesses; but in the course of hearing, they generally actually take up only a select few out of them. The evidence actually recorded is not as a rule markedly unnecessary or avoidable.

To control the citation and examination of an unnecessarily large number of witnesses, the only course open to the court, in my opinion, is not to allow to the successful party the costs of such of the witnesses as in the opinion of the court were either superfluous or did not prove anything.

36. A provision that oral evidence need not be recorded in such cases, except where the court desires it, will serve the purpose.

37. I am entirely in favour of this proposal though it is not perhaps so necessary in civil as in criminal cases. If a judge is strong and capable, he can generally check unnecessary examination and cross-examination by a few well chosen words: but some judges are not strong enough or are perhaps too diffident to do this. I think a judge should have behind him the power to fix a time limit.

38. I would not extend the application of Order XXXVII to the ordinary mofussil district. So long as the Deccan Agriculturists' Relief Act exists, comparatively few suits would be affected

39. I would accept an alteration in the law providing that a proceeding by or against a father should always be treated as binding on his undivided sons: and the same rule should be extended to the case of managers of a joint Hindu family. They should be clothed with the power to represent the joint family in all matters: and the impleading of other members of the joint family should not be insisted upon. If a manager or a father in a joint Hindu family acts contrary to the interests of the other members of the family, the latter should have their remedy against the father or manager, but not against strangers, who have dealt with the father or the manager. Where coparceners of a joint Hindu family put forward one of them as their representative or manager or where they expressly or impliedly consent to his attending to the affairs of the family, transactions entered into by such

a person should be held binding on the other coparceners. The principle underlying section 41 of the Transfer of Property Act is the same: and I fail to see why it should not be applied to them. Once this principle is established, I do not think there will be any serious difficulty later on.

The case of Muhammadans and co-owners stands on a different footing and I would not extend the principle to them.

40. I do not think this to be practicable.

41. In this district, it is only in very rare cases that some delay is caused in appointing guardians *ad litem*.

The suggestion made in the second paragraph of the question might be adopted.

42. My experience and that of my subordinate judges is that undue advantage is practically never taken.

43. It must be admitted that in many cases subordinate judges do write unnecessarily long judgments, especially in the earlier years of their service. The only remedy is for the district judge to point out this fault to the subordinate judge in person: or perhaps in an extreme case to refer to it in a judgment in appeal. I think that a subordinate judge will usually try to correct that fault if it is pointed out to him.

44. The practice is, if the points of law going to the root of the claim or defence involved in any case are quite free from doubt and are covered by direct authorities, to dispose of them first. But if there is reason to think that such points are debatable and not quite free from doubt, it is usual to dispose of those points simultaneously with other questions of facts with a view to avoid a possible remand by the appellate court if that court were to hold a different view on the points of law, as laid down by the High Court in 6 Bom. L. R., page 925.

45. I encourage and advise my subordinate judges to look to these matters themselves. I think, however, that is often left to the sheristadar in practice. So far as I know, this does not imply any extra delay in disposal.

47. In these courts it is only in rare cases that witnesses are examined on commission. I am prepared to accept the last suggestion.

48. I do not think that affidavits are likely to achieve the object contemplated. Now-a-days, affidavits and even oaths or solemn affirmations are treated by the persons concerned as merely formal matters; they never attach any solemnity to them.

Written applications for adjournment are as a rule put in when they are asked for after issues are raised. But a stamp of 2 or 8 annas and subsistence allowance to a few witnesses are not, I think, sufficiently deterrent; courts should be empowered to allow special costs in such cases.

49. When suits are once commenced they are ordinarily taken up day by day, or at very short intervals, when actually necessary.

54. I am entirely in favour of this suggestion.

55. My subordinate judges do not think this proposal would help materially.

56. (*a*) I think this is one of the most useful of the suggestions made. My own opinion which agrees with that of the experienced subordinate judges I have consulted is that Article 182 should be abolished altogether. It serves no useful purpose at all. In a very large number of cases the decree-holder puts in a *darkhast* and when notice is ordered to issue simply fails to pay the process fee. The *darkhast* is then disposed of, but the decree is kept alive.

I would cut down the period given in section 48 of the Civil Procedure Code to six years. I do not think this would cause any particular hardship to decree-holders in general. This would only happen if a judgment-debtor between the sixth and twelfth year came into possession of fresh property or resumed possession of property which he had successfully concealed from

the knowledge of the decree-holder. The chief cause for the enormous number of infructuous *darkhasts* at present is that decree-holders knowing that they are allowed twelve years do not take the trouble to proceed seriously. This is probably more largely responsible for the general delay in the execution of decrees than all the other causes of delay which could be mentioned put together.

The immediate effect of this suggestion if adopted would be to make decree holders more vigilant, to reduce very largely the number of infructuous *darkhasts* and to that extent to afford relief to the judge and (what is by no means unimportant) to his establishment.

57. Under section 66 as it stands at present the real purchaser as plaintiff is estopped from saying as against the ostensible court purchaser that the later was merely a benamidar for him: but the section does not prevent the real purchaser as defendant from setting up that plea as his defence in a suit brought by the ostensible purchaser against him. It is illogical that a man should be allowed to say as a defendant what he is prevented from saying as a plaintiff, and I would agree that the bar under section 66 should be extended to real purchasers as defendants. I see no justification for setting up such a bar against a third person. In an ordinary district the number of suits affected by the suggestion would be very small.

58. I am not generally in favour of the proposed change, because it would operate as a hardship on ignorant agriculturists, who make repayments mostly in kind; and the proposed change will make such repayments impracticable. So far as I am able to ascertain, false pleas of repayments are put forward very rarely. I have no objection to the proposal, which has some merit, provided that agriculturists are excluded from its operation.

59. Notice to a transferor can conveniently be dispensed with, and may occasionally save time, although a notice to the judgment-debtor will be necessary in any case.

The second proviso to rule 16 of Order XXI is the logical consequence of the principle that the liability of the judgment-debtors is joint and several. I do not think this proviso should be deleted or modified.

60. I think that the provisions of Order XXI, rule 21, should be retained. The powers conferred under the rule are discretionary and will not be used arbitrarily by the courts.

61. (*a*) and (*b*) If any repayments are made, it is for the judgment-debtors to allege and prove them. But they will have no opportunity to prove them and allege them, if such notices are dispensed with. My opinion is that a notice under rule 22 should be retained. This should necessarily be done if Article 182, which prescribes limitation for execution applications, is repealed.

62. The proposal would affect the discretionary powers of the court, which is not desirable.

The following clause may be added to paragraph (2):—

"and subject to such conditions as the court may deem fit to impose."

63. If a judgment-debtor appears in response to a notice under Order 21, rule 22, he may be examined there and then with regard to the existence of any encumbrances over the property and with regard to the other particulars required for sale proclamation: and no further notice to him under Order 21, rule 66 need be issued. But if he does not appear in response to the notice under rule 22, a notice under rule 66 should issue.

64. It is not necessary to serve the judgment-debtor with a copy of the proclamation of sale. The modes prescribed in Order 21, rule 67 (1) for the publication of the proclamation of sale are, in my opinion, calculated to give sufficient notice to the judgment-debtor about the sale. It happens not infrequently that warrants of attachment are returned unexecuted on the ground that the property sought to be attached is found to be in the possession of third persons or on the ground of obstruction by third persons. In such

cases if the writ of attachment and sale proclamation were issued simultaneously, the latter would be inoperative or would have to be kept in abeyance. Further in the interests of the security of titles conveyed by court sales, some interval should elapse between the dates of these two writs. During this interval persons having any interest in the property attached would have an opportunity to establish their claims under Order 21, rule 58. The decision of these disputes though not final, would go some way towards giving undisputed titles to the auction purchasers. I, therefore, think that writs of attachment and sale proclamation should be issued at different stages as at present.

Under the new Pleaders' Act the pleaders are not bound to appear for their clients in execution proceedings unless they are paid fresh fees. Service of notice on a pleader would not suffice.

65. I am against the proposal. Village officers are in no way under the control of the courts, and it is not practicable to place them under such control. There is no hope that they would do this work satisfactorily.

66. (*a*), (*b*), (*c*), (*d*), (*e*) The present law as to joinder of parties to a mortgage suit is embodied in Order XXXIV, rule 1 of the Civil Procedure Code. A person who sets up a title to the mortgage property paramount to that of the mortgagor and mortgagee is not a necessary party. Similarly a prior mortgagee is not a necessary party to a suit brought by a puisne mortgagee for sale or to a suit for redemption of a simple or usufructuary mortgage instituted by a mortgagor against his puisne mortgagee. Further under the present procedure if a plaintiff in a mortgage suit does not join all the necessary parties indicated in rule 1 the court is not entitled to strike off the suit for non-joinder, but is bound to deal with the matter is controversy so far as regards the rights and interests of the parties actually before it (*vide* Order 1, rule 9). The court has power to add parties *suo motu* at any stage of the suit, but the question of limitation may arise. If a person who ought to have been joined is not joined and a decree is passed in the suit, the decree cannot affect his rights, for instance, a decree obtained by a prior mortgagee to which a puisne mortgagee was not a party. The sale made in execution of such a decree would not affect the rights of the puisne mortgagee to redeem the prior mortgage. The same remark holds good in respect of decrees to which prior mortgagees are not parties, for in such cases the sale would of course be subject to the prior encumbrances.

At present then the court purchaser does not acquire title free from further litigation not only so far as the necessary parties under rule 1 not joined are concerned, but also with respect to the persons who claim to hold the mortgage property independently of the mortgagor and the mortgagee but who are not necessary parties under the rule in question.

If the mortgaged property is land paying revenue to Government, the entries in the record of rights, the production of the extracts from which is compulsory in all mortgage suits, give sufficient notice of the rights of all persons, as prior or puisne mortgagees or as independent title-holders so far as lands are concerned. I would make it necessary that in all mortgage suits praying for the sale of land, the plaintiff should be compelled to join all persons shown in the record of rights on pain of the dismissal of the suits for the non-joinder of any of them. The rights of independent owners should be finally determined in such suits.

But where the mortgage security is other than land I think that the present law should continue, because the plaintiff has no reliable source at his command to ascertain the equities or rights of third persons with respect to such property.

In the case of sales held in execution of decrees relating to mortgage security consisting of lands arrived at after the disposal of all the points referred to above, the suggestions made in clause (*d*) of this question, should be adopted.

In my opinion no final decree is necessary in a suit to enforce a simple mortgage and no fixed time should be allowed as a matter of course. But the court should be given discretion to allow time for payment.

I am also of the opinion that the decree-holders should not be compelled to obtain separate personal decrees for the balance of what is due to them remaining over after the security has been exhausted, but that they may be allowed to claim the balance simply by filing *darkhasts* for that purpose. Execution should be granted only if they satisfy the court that the security has been exhausted.

67. This happens very rarely in my experience.

70. In this part of the country much of the execution proceedings are subject to the provisions of the Deccan Agriculturists' Relief Act. In the rest I find on enquiry that delay is not often caused by absconding judgment-debtors and no special change in the law is necessary. I take it that an examination of the privileges conferred by the Deccan Agriculturists' Relief Act is not within the scope of this question.

73. It does not as a rule require much time to obtain a certified copy. The delay is in applying for it, not in getting it after applying.

I would allow parties by mutual consent to give secondary evidence in any form.

74. The only suggestion I have to make is that the period allowed for redemption should be reduced to 30 or even to 20 years. The present period is entirely out of proportion to the 12 years in which an owner may lose his title by adverse possession.

75. I have no particular changes to suggest apart from those discussed under the several questions.

76. If agriculturists and other ignorant persons are not inconvenienced by having all sales and mortgages registered, there is no reason to think that the introduction of this rule will work as a hardship. I am entirely in favour of the suggestion.

77. I do not think there will be serious objection to the compulsory registration of partnerships.

78. It is not my experience or that of my subordinate judges.

I see no objection to the suggestion made.

79. The suggestion may be adopted only with respect to those original documents which are required by law to be registered, but not to those which are not compulsorily registrable but which are actually registered.

80. The suggestion is not practicable in an agricultural district, particularly since village registration have been abolished. I would accept the proposal except as regards agriculturists.

81. The proposal would probably be effective, but popular opinion would be so adverse owing to the immemorial tradition of benami transactions that I think it is impracticable.

82. The new law (the Civil Procedure Amendment Act IX of 1922) recently passed with regard to allowing costs by way of compensation for false or vexatious claims or defences should be given a trial before any further action is considered.

I am not in favour of enhancing court fees.

83. I do not think there is any justification for making a difference between mortgage deeds on the one hand and sale deeds, leases, etc., on the other, in the matter of attestation.

86. Not in my experience. Apart from the Indian Law Reports published under Act XVIII of 1875, the Bombay Law Reporter is frequently quoted in this Presidency.

The only other reports to which I allow reference, or which are ever referred to before me are the Calcutta Weekly Notes and the Madras Law Journal.

87. I am entirely in favour of codifying the Hindu Law as soon as possible. A Code of Hindu Law on the lines of that published by Dr. Gour would, in my opinion, do away with a good deal of uncertainty, and would tend to make justice more speedy and economical.

Mr. F. W. ALLISON, I.C.S., District Judge, Ahmednagar, called and examined on Friday, the 22nd August, 1924.

Dr. DeSouza.—You are at present a district judge at Ahmednagar?

Mr. Allison.—*A.* Yes.

Q. And before that you served as a registrar of the High Court of Bombay?

A. Yes, for five years.

Q. How long have you been the district judge of Ahmednagar?

A. Since November 1922.

Q. Ahmednagar is one of those districts which are covered by Deccan Agriculturists' Relief Act?

A. One of the four original districts.

Q. The other districts being Poona, Sholapur and Satara?

A. Yes.

Q. What is the peculiarity so far as the general procedure is concerned of districts covered by the Deccan Agriculturists' Relief Act? I shall first trouble you about the jurisdiction with regard to the district court. In the first place no subordinate judge in these four districts is invested with powers under the Small Cause Court Act?

A. That is so.

Q. The result is that all suits brought against the agriculturists in this presidency have to be tried in their regular jurisdiction?

A. Yes.

Q. Now, so far as the district of Ahmednagar is concerned, I see you say that the duration of suits in the courts of the subordinate judges, of first and second class, is reasonable.

A. That is my considered opinion having regard to the practical circumtances existing at present.

Q. And I think it is also my opinion after seeing the state of things in other provinces. The average duration of contested suits in the courts of subordinate judges, is about eight to nine months?

A. That is so.

Q. That I think is very very reasonable, and I see from the figures that the disposals of subordinate judges, first and second class, in the district itself, in 1923, is also very reasonable, but I am sorry to find that the number of suits pending more than a year, with the first class subordinate judge at Ahmednagar, is rather considerable.

A. There are special circumstances and I can explain if the Committee would care to have it.

Q. I do not want to go into details.

A. It is due to the personal effect of the first class subordinate judge who is unable to do his work.

Q. It is a personal consideration?

A. Yes.

Q. So far as the district judge is concerned I see that there was no original suit either instituted or disposed of in the year 1923.

A. That is so.

Q. Will you kindly explain to the Committee what is the nature of the original litigation that comes before the district judges in this presidency?

A. Practically suits in which the Secretary of State is either a party or a defendant.

Q. The subordinate judges have no powers to try these suits. You think that there is no reason why the suits against the Secretary of State should not be filed in the courts of the subordinate judges as is done in all the provinces of India except Bombay?

A. That is my opinion.

Q. A Bill to that effect was introduced in the local Legislative Council two years ago and it was thrown out. Will you explain to the Committee why the majority of the Council considered that suits against the Secretary of State should not be heard except in the courts of the district judges?

A. I cannot explain in detail, but it was given in the paper, "Times of India," that there was no objection to the principle of the Bill. It was to the form in which it was presented that the objection was taken, and it is not for me to say anything about the temperament of the Council at that time. I think that if the Bill be brought forward again in a different form it will be accepted.

Q. They did not object in principle?

A. No.

Q. Now I proceed to another point. You suggest certain methods for expediting the disposal of work of the subordinate judges in this presidency. The first method you suggest is the method that has been suggested to us elsewhere, and it is that shorthand writers should be provided to second class subordinate judges, after five years' service, and to all the first class subordinate judges and the district judges. For what purpose—for recording evidence or for taking down judgments?

A. I would like to have them for recording evidence, but I do not think that it is practicable. I will certainly have them for taking down judgments.

Q. Have all the district judges been provided with shorthand writers?

A. So far as I know.

Q. Do you have one at Ahmednagar?

A. I have one at present.

Q. For what purpose do you generally employ him?

A. For taking down judgments.

Q. In your court you deliver judgments after hearing the arguments.

A. Always in sessions cases and very frequently in civil cases—excepting cases which involve complicated points.

Q. Do you think that subordinate judges have sufficient training to be able to make the use of shorthand writers? To have a shorthand writer is one thing and to use a shorthand writer is another thing.

A. I have no experience because so far subordinate judges have not had shorthand writers. But I see no reason why a subordinate judge with five years' experience should not be able to dictate his judgments.

Q. Have you found all the district judges, who are provided with shorthand writers, making full use of shorthand writers? I find that some of my predecessors and my successor did not make use of the shorthand writer provided to them.

A. I cannot say. In Ahmednagar I have got a shorthand writer and I make use of him.

Q. At what pay can you get a shorthand writer?

A. The district judge is allowed to recruit from one of his clerks and to send him to Bombay. He gets training for about six months and when he is qualified he is given an allowance of rupees thirty per mensem.

Q. That is an excellent method. He gets more than his co-ordinate clerk by thirty rupees a month?

A. That is the present arrangement.

Q. Of course, if you have to employ a shorthand writer from Bombay you have to pay him a great deal more?

A. You cannot get a competent shorthand writer for less than Rs. 150.

Q. That system has been lately introduced in this presidency and it is a system which will be introduced in other provinces where there are facilities for learning shorthand?

A. Yes.

Chairman.—*Q.* Are they fairly competent at the end of six months' training? Do they manage to take down efficiently?

A. They manage to take down but not absolutely correctly.

Dr. DeSouza.—*Q.* You make some very useful suggestions about the process-servers. We call them here bailiffs. Have you got a central nazarat in Ahmednagar or separate nazarats?

A. The nazir of the district court is generally concerned with the district court and every other court has got a nazir.

Q. The nazir of the 1st class sub-judge's court is concerned only with the sub-judge.

A. Yes.

Q. You have not got any small cause court in Ahmednagar.

A. No.

Q. How many bailiffs have you attached to the nazir working in the district court?

A. I think I am right in saying that there are no bailiffs working in the district court.

Q. So that, the nazir in the district court is not in charge of the bailiffs and has nothing to do whatever with them.

A. Absolutely none.

Q. All the bailiffs are practically under the nazir of the first class sub-judge's court.

A. Yes, subject to supervision by the deputy nazir.

Q. What about the processes in the district court which have to be served?

A. They are sent to the 1st class sub-judge's court.

Q. The returns of service or non-service are sent by the first class court to the district court.

A. Yes.

Q. Suppose a process is issued by the first class court of Ahmednagar for service in the jurisdiction, let us say, of the court of Navasa or Rahuri. Would the bailiff of the first class court go all the way to Navasa or Rahuri or would it be transferred to the sub-judges of those districts for service?

A. My impression is it will be sent to the court in whose jurisdiction the process is to be served.

Q. So that, there is no waste of man power in the sense that two men will go to the same village to serve processes of one or other of the courts.

A. No.

Q. Then, I next come on to the pay of the process-serving establishment. You rightly say that unless and until the pay of the process-serving establishment in this province was increased, it would not be possible to get the right class of men. Would you give the Committee an idea of the scale of pay before the increase and after the increase?

A. I am sorry I cannot give the details. My impression was that the bailiffs got Rs. 12 a month.

Q. My impression is also the same and it rose to Rs. 20 a month. At present the scale is, I think, from Rs. 25 to Rs. 40.

A. I think it is more than Rs. 40. It is as much as Rs. 50. It is my general impression.

Chairman.—Q. What we are anxious to hear from you is whether the raising of the pay has improved the work of the establishment?

A. It is too soon to say. I think it will improve the work if there is sufficient supervision.

Q. It will not be a case of requiring a larger amount of illegal gratification because he is now a bigger man with more money.

A. If they are sufficiently paid I think their work will improve.

Dr. DeSouza.—Q. Do you think by raising the maximum to as much as Rs. 50 you will be able to tap another and better class of men than at present? Hitherto the bailiff class was more or less a servant class, who, I think, will be more amenable to illegal gratification than the men you may be able to tap in the higher scale. Do you think you will be able to tap men of higher social strata and with good education?

A. In the last fortnight I had two applications for the post of bailiff from people who were reasonably well educated and who, I think, are persons who have passed school final examination.

Q. Do you think it will be feasible for them to do the work of touring and travelling which only the bailiffs now recruited from the low class of society are able to do?

A. I think so. Unless he is physically fit, I won't appoint him.

Q. So that, the general trend of your opinion is that by the raising of pay you will be able to tap the more educated class and people of higher strata in society.

A. I think so.

Q. That will enable you to have better work.

A. Yes.

Q. Then coming on to the local supervision of the bailiff's work, you know the system of the nazir and deputy nazir touring round the villages, which I first introduced in my district in 1904 and which was then introduced throughout the presidency. Will you kindly give an explanation of that system?

A. It was to a large extent due to the inspection tours of the High Court judges that improved arrangements were made. First of all the nazir of the sub-court was sent out a particular village to see whether the processes said to have been served were really served. He would make local enquiries. His tour will more or less be unpremeditated. The bailiff would not know to which village he was going. There is another additional officer, the deputy nazir. He is working under two heads. First of all he is in charge of the estates administered by the district court under the Guardian and Wards Act. His second duty was to be an inspector of bailiffs. In his first capacity he has to go all over the district because there are very few villages in which he has not got some property to attend to. He also would check the work of the bailiffs and he was able to do very much better than the nazir of a subordinate court.

Q. What was exactly the nature of the check which the deputy nazir would exercise?

A. He would have the bailiff's diary with him and would see what processes were served. He would call the defendant and ask him whether the process was served on him.

Q. In that way he would be able to check and see whether there was fraudulent service or suppression of service or some such thing to which the bailiffs were accustomed.

A. Yes.

Q. Unfortunately that system was abolished.

A. On account of financial stringency it was abolished.

Q. It was abolished because the touring allowance of the nazir will come to Rs. 15 a month and of the deputy nazir to Rs. 20 or 30 a month and the result, I take it, is, as you rightly point out, that the efficiency of process-serving has very seriously deteriorated in this province.

A. Yes.

Q. What is the percentage of personal service now, after that system was abolished? I think it has not come to anything higher than 66 per cent.

A. Yes.

Q. Have you any idea as to the percentage of personal service when the system was in force?

A. I should say it was over 85.

Q. So, you are strongly of opinion that if process-serving should be improved, that system should be re-introduced and you would even go further and suggest that there should be an officer exclusively employed in making local inspections of the bailiff's work and he is to be called inspector of bailiffs.

A. If it is desired to make the serving of process as efficient as possible, I am strongly in favour of it.

Q. You are strongly against service of summons by post?

A. Yes, I don't believe in it. As far as I know it has never been satisfactory.

Q. The High Court very recently introduced it in all the towns and taluk headquarters. They say in all these courts service by post may be by registered post. Has that system proved to be a failure?

A. In my opinion I would not attach any importance whatever to the reports of the postal authorities. What happens is this. You get a registered letter refused. I would not attach any importance whatever to that.

Q. They say that a return showing that an addressee has refused would be considered as a *primâ facie* evidence of service. If the defendant comes forward that the decree should be set aside, because summons is not properly served then it should be taken as a *primâ facie* case of non-service. There was a circular about this. Have you read the circular?

A. I cannot remember those details.

Q. Details of decrees set aside on the ground of non-service from the defendant alleged to have been served. I understand from my own district—there were only very few such cases and from that I inferred—that the system of service by registered post in large towns at least was a success. You seem to have contrary opinion.

A. I cannot support it. I have not paid particular attention to that.

Q. In a nazarat, regarding the inspection of the bailiffs, could something be done by keeping a record every month of each individual peon and the work done by him?

A. That is being done now. I attach very great importance to inspection by the district judge of the subordinate courts. Then I generally call for the records of all the bailiffs. If you get a man who is worse than all the others then he is warned for the time. If he does not improve then he is no longer employed as bailiff. Then he is discharged and the reason publicly announced.

Chairman.—*Q.* Does the work of each individual peon come before the district judge regularly or only when he goes there on inspection?

A. Only when he makes an inspection.

Q. Does it go before a subordinate judge?

A. A subordinate judge is supposed to look into them every month.

Q. Do they ever submit to you certain names of bad people who have been warned by them or something of that sort?

A. Yes, as a general rule. And when there are two or three vacancies among those who are entitled to it by seniority I allot them to those who have done the inspection well and the promotion goes to them.

Dr. DeSouza.—Q. Do not the subordinate judges maintain reports of the work done by each bailiff?

A. I don't think there is any general order like that. That depends on each district judge.

Chairman.—Q. If this system of inspection is insisted on, would it be a good thing?

A. Yes. Any thing that would impress on the man that he is being looked after is very good.

Q. In the Madras Presidency the system that is adopted works well. You have there a certain amount of competition.

Dr. DeSouza.—Q. In the district in which I have served I have always insisted upon a certain percentage of personal service for every month and action was taken against any particular peon whose average did not come up to that. Well, now we come to another point. I see you say that with regard to training of munsifs you consider that after selection—I suppose you make the selection from practising lawyers of two to five years' standing—you consider that they should not take independent charge of a court at once, but that they should undergo training under a first class subordinate judge.

A. Yes, that would not be objected to. The execution part is the most important thing and he should not be given entire charge of a court. He should watch the proceedings and see how a thing is done. I would not object to the subordinate judge giving his opinion before passing an order.

Q. During this training for about the period of say six months do you think that he should learn routine work in the office?

A. I don't think that is very important.

Q. Coming to the question of giving training to the Indian Civil Service officers before they are appointed as district judges, do you think that the training the Government of India gives covers all the courts? Will you give the Committee an idea as to the nature of the training that a young civilian has to undergo before taking up his judicial office?

A. Rules have been changed. The period is 18 months. During that time he is given a certain number of cases to try, lighter suits from the subordinate judges file. He has a certain amount of leisure to devote to the study of law. It is all changed since my time.

Q. While he is under training he is given a certain number of easy suits selected in their serial order so that he may have some experience of all the suits. Then he is considered fit to be invested with appellate powers?

A. That is so.

Q. Do you consider that that system so far as it goes is a very good system? Unless the young civilian is given whole charge of a munsifi or a subordinate judge's court he will have no idea of the execution work and the execution work is the greatest thing. In Burma they are not only making him try all the execution proceedings and difficult cases of that sort, but also give him exclusive charge of the second class subordinate judge's court and then of the first class subordinate judge's court making him do the entire work. That is what is being done in Burma. Would you not be in favour of that rule?

A. It is a new idea to me. I accept that. This will be very useful for him later on when he becomes a full blown district judge. I myself would have been a more efficient judge than I am now if I had that training.

Mr. Gupte.—Q. Don't you think that instead of getting subordinate judges appointed from pleaders of three years' standing it will be better if you get pleaders of large experience say five years or seven years? Do you

think that will shorten the period of probation? Would not that be a better way of recruiting?

A. I don't think so. This has been discussed for very many years. The latest opinion is to get a young man. They learn the rudiments of law and they look into the inside of the case. I prefer to have them. If you have to wait much longer than five years they would be getting old.

Dr. DeSouza.—*Q.* How are munsifs recruited in this province?

A. They are now selected from the Bar since the system of selecting from qualifying posts was stopped last year.

Q. What was the principle of the system?

A. The principle was that there are a certain number of posts in the district courts and in the sub-courts and more particularly in the Secretariat, which are supposed to have special virtue in making a man fit to be a subordinate judge. I never believe that myself. A sheristadar in the court of the subordinate judge was posted to examine a certain amount of evidence and a few cases. Then it is supposed that he is qualified to be a sub-judge without any legal training or knowledge.

Mr. Gupte.—*Q.* The present system of selection is different I think. There are three judges of the High Court and two members of the Bar.

A. One advocate and one pleader.

Chairman.—*Q.* Do they select only people who have a degree, that is, those who have passed in law?

A. Yes, and they must be pleaders of not less than three years' practice. There is an age-limit of 30.

Dr. DeSouza.—Proceeding next to the work of the district court—I am only taking the important points from your statement which is a very interesting one—I am not going through every detail.

A. I consulted experienced subordinate judges and the details which I have given were practically their opinions.

Q. Thank you. There is one peculiarity in this province about the work of the District Courts and that is, there is a large number of applications under the Guardian and Wards Act in which were employed officers of the court—such as deputy nazir—as guardians of private wards. In other provinces where the court is unable to find any suitable private guardian they never employ any but here a special officer by the name of deputy nazir is appointed by the district judge solely for the purposes of serving as a guardian of minors. Now will you kindly explain to the Committee under what circumstances you appoint an officer of the court as a guardian of a minor.

A. Suppose a minor is left with some property and it often happens that near relations are not suitable guardians. And it also often happens that there are quarrels between the relations. I generally have three or four cases every month in which the father of the minor leaves some property and also a brother. Now that brother takes possession of the property and ornaments, etc. He sells the cattle and pawns the ornaments and often sells a piece of land and professes that he is doing this for the benefit of the minor and on his behalf. In this way the man swindles most of the property and in cases of this nature when we find that the quarrel is really serious we appoint our deputy nazir.

Q. It means that in case you are not able to find a relation or some other person whom you consider to be a fit person to serve as a guardian then you appoint an officer of the court?

A. If I can find a fit person to act as a private guardian I should very much prefer to appoint that private man as a guardian of the minor.

Q. In this way in Ahmednagar how many suits are there or how many estates are managed by your deputy nazir?

A. I am sorry I am unable to give the exact number.

Q. How does the Government meet the expenses of the appointment of this nazir?

A. By some percentage on the value of the estate.

Q. By a commission of 5 per cent. on the realization.

A. Yes.

Q. And generally it is found that this commission is more than the pay of the deputy nazir with the result that there is a general saving to the Government.

A. One-fifth of the fee goes towards inspection.

Q. By appointing the deputy nazir the Government has to pay nothing at all but sometimes makes money and also employs him for the purposes of inspecting bailiff's work.

A. Yes.

Q. If some such scheme is followed shall we not have the double advantage, *i.e.*, the management of the estate of the minor and also the inspection of the bailiff's work?

A. Yes.

Q. Coming next to the question of supervision does this entail a considerable amount of work upon the district judge because the estates are subject to your supervision?

A. Since the introduction of the registrars I have left this work for him.

Q. You are the only fortunate district judge who has got a registrar but suppose you have no registrar then I think you shall have to do this work yourself. Will it not be a considerable amount of work for the district judge?

A. Yes, enormous work if it is done by the district judge himself.

Chairman.—*Q.* Who actually checks the nazir's account?

A. Every third month a senior officer of the court is deputed to do this checking and his report is submitted to the registrar and then it is put up before me and if I think anything is important, I look to it myself; otherwise I rely on the registrar's checking.

Q. What is the income of the property that this nazir looks after?

A. I am afraid I cannot give the exact figure at this time but if you want I can get the information for the Committee.

Q. Is not any man from the Accountant General's Office sent to check the accounts?

A. No.

Q. Has he got a clerk or an accountant so as to keep his separate books?

A. Yes. His accounts are submitted to me daily and I sign them after looking through the various items.

Dr. DeSouza.—*Q.* Then we come to the question of the registrars. Will you kindly explain to the Committee what his duties are?

A. They were introduced towards the end of the war and they were selected from subordinate judges of five to twelve years' experience. First they were posted to help the district judges in making recommendations for promotions and transfers of the whole of the ministerial staff. It was supposed that they would be gazetted officers and impartial and in closer touch with the circumstances of each clerk. The second thing was that they were supposed to take over the work of inspecting and managing the minor's estates, and were to be responsible and take charge of the whole correspondence of office. They were to supervise the various heads of the departments and in ordinary matters of routine they were to make recommendations to the district judges and practically to put up papers for the signature of the district judges. They were practically the same as the registrar of the High Court.

Mr. Justice Stuart.—*Q.* And were these duties sufficient to keep him fully occupied?

A. If they were properly done.

Q. And I take it that your district is not a very heavy district?

A. No.

Q. So even in a district which is not heavy there is ample work for an officer of this class and he is able to relieve you of the work which would otherwise take up your time and prevent you from attending to your more important work as a district judge?

A. Yes.

Q. You say that this system was introduced with the intention of relieving judges, but they were given up except in one place?

A. Yes.

Q. Were they given up because they were a failure?

A. No. The Council refused the grant on account of financial stringency. My registrar is an excellent man, he is not useful as a subordinate judge because he is very deaf and that is why the Government kept him as a registrar.

Dr. DeSouza.—*Q.* We are thinking of making this officer a little more useful. At present so far as I remember he does the work of a little more than a personal assistant. Our idea is not so much to make him a personal assistant as to relieve the district judge and make him a head in a district where there is a large concentration of courts, as in Ahmedabad and Poona. The idea is to make him the head of the unified office for all the subordinate judges sitting at a particular headquarter. All plaints will be registered in the office of the registrar, the whole of the preliminary spade work of these suits will be done by him with his staff, and he will also deal with all the uncontested work of all the courts at the headquarter, in addition to the duties which he is doing at present. What do you think of that suggestion?

A. The principle is very good, but I do not think that he will be able to do all this work.

Mr. Justice Stuart.—Well, of course, if the principle is accepted the number of registrars would be increased to meet the duties. The principle is to relieve the district judges and all the subordinate judges of office matters and to separate the uncontested work from the contested work leaving him to decide uncontested matters. This officer will be in a way somewhat similar to the registrar of the Presidency Small Cause Court and the registrar of the County Court in England.

A. I think that would be a very good idea.

Dr. DeSouza.—It will be first tried in places where there is a concentration of large number of courts and not in small places.

A. There will possibly be another advantage and that will be that by this arrangement pleaders will be able to appear in time at different courts.

Chairman.—It will get rid of a certain number of sheristadars, for each judicial officer has a little office of his own with one sheristadar, and a couple of muharrirs including execution muharrir and the one who receives plaints. You will have to keep only one office and a certain amount of saving will be effected.

A. Undoubtedly.

Dr. DeSouza.—The first class subordinate judges would not require highly paid clerks of the court, nor would they require sheristadar, execution clerks, etc., and thus there would be an economy if a unified office is established.

A. There will be a very considerable economy.

Mr. Gupte.—*Q.* Under the scheme just proposed, how will you deal with the different classes of jurisdiction. A suit is to be filed in the court of the least jurisdiction, but if you have all the courts together, how will you deal with that?

A. The registrar would be a delegate or a representative of each judge and deal with each particular case.

Q. He will allocate cases to each court?

A. Yes.

Dr. DeSouza.—I am next coming to another point, village courts. I think at present we have got no village courts except in places where the Deccan Agriculturists' Relief Act is in force.

A. Yes.

Q. The only other unpaid agency is the jagirdar and he disposed of five small cases last year.

A. Yes. It is all a very small affair.

Q. Will you kindly tell the Committee what is the class of cases he disposed of?

A. I don't really know. They were very small cases. They could have been tried by a second class sub-judge. Last year I think the second class sub-judge did most of his work.

Q. Coming to the village courts proper, in the four districts in which you have got them, they are called village munsifs.

A. Yes.

Q. I see they have got exclusive jurisdiction to try suits up to Rs. 10.

A. Yes—money claims.

Q. How many suits were decided during the last five years?

A. I think the average is 1,177 suits a year, for the last 10 years.

Q. They were money claims of Rs. 10 and under.

A. Yes.

Q. Are you satisfied with the work done by the village munsifs?

A. I never had any complaints and I think it is a very good test. It is quite easy to come to me.

Q. You have got a power of revision over them.

A. Yes.

Q. Have anything come to you in revision?

A. Not all the time I have been.

Q. What is the class of persons who are appointed as village munsifs?

A. Generally some local person, a local Brahmin or a local big cultivator. Generally speaking, he is a Brahmin.

Q. The success of the experiment has been so great that you consider that the jurisdiction might be raised in view of the less diminished value of the rupee, to Rs. 20 a month.

A. Yes. Rs. 20 or Rs. 25 more or less corresponds to Rs. 10 before the war.

Q. You would be in favour of extending the system through the whole of this Presidency.

A. Yes. I see no reason why it should not be extended.

Q. In fact it has been found to be most useful not so much to relieve the agriculturists as to relieve the sub-judges in industrial centres.

A. Yes.

Q. You would be in favour of extending the provision throughout the presidency and you would give them exclusive jurisdiction up to Rs 20.

A. Certainly.

Q. You would not make the jurisdiction concurrent with the sub-judge.

A. Yes. I mean the present system works well.

Q. If the jurisdiction is raised to Rs. 20 or Rs. 25, do you consider that there will be some corruption amongst munsifs? Can you rely on impartial justice being done?

A. I don't think there is any corruption. I have already said that I had not received any complaints regarding them.

Q. Would you be in favour of a system of having what are called village panchayat courts? They are very successful in Madras. They are being adopted in Bengal and United Provinces to some extent. These village panchayats consist not of one munsif alone but of four or five persons. In Madras they are all elected by universal manhood suffrage. The idea is to invest them with concurrent jurisdiction up to Rs. 50. How far do you think such a scheme would be of any use in this presidency as a method of quick disposal? There is no doubt that the suits will be disposed of much quicker. As a measure of expedition, it will be very efficient. As a measure of doing justice how far do you think it would prove successful?

A. The only trouble is in most districts in this presidency every village is divided into two bitter factions.

Q. You would not be in favour of trying that system even tentatively.

A. I think in Bijapur, it will be impossible. In every village the faction is so bitter that in practice I don't think it will work well.

Q. Can you give the Committee an idea of the conciliation system prevailing in this province?

A. It has been abolished.

Q. Don't the sub-judges get conciliatory certificates before they can entertain a suit against an agriculturist?

A. My impression is it has been abolished.

Q. We will come to another point—the work of the district court and its appellate jurisdiction. The other provinces find it astonishing that in the year 1922 for instance out of 4,000 first appeals instituted in the district court, our district judges were able to dispose of as many as 762 under Order XLI, Rule 11, without issuing notice to the respondent. That system is practically unknown in other provinces and the district judges admit the first appeals as a matter of course without fixing any date for hearing them under Order XLI, Rule 11. Will you kindly explain what do you do when an appeal memorandum is presented?

A. It first of all goes to the office and the registrar sees whether it is in time and whether it is stamped aright. It then comes to me and I read through the judgment. Certainly 8 appeals out of 10 have to be heard. Two appeals seem to be hopeless and they are heard under Order XLI, Rule 11. As a matter of fact it depends almost entirely on the personality of the judge. I know last year I was astonished to see that the number of appeals rejected under Order XLI, Rule 11, was between a third and a half of those presented. It is very much a personal matter.

Q. Under Order 41, Rule 11, would you send for the records?

A. The record is there automatically. It comes up every month. I believe in admitting as many appeals as possible. There is not so much work in the district where I am now. But I don't say it would be possible for another judge elsewhere.

Q. What percentage are you able to dispose of under Order 41, Rule 11?

A. Last year the number was only about 8 or 9, out of the total number of 700. That is rather an exception. This year 10 per cent. at the outside.

Q. Do you think it is really waste of time that some judges object that they have got to hear cases twice from the judge's point of view?

A. I decide these cases quickly. If a pleader cannot convince me in 10 minutes I dismiss it. I don't mind giving such cases 10 minutes.

Q. You can easily delegate some of your duties to the registrar?

A. No, that I would not.

Q. Would you sort out some case such as suit for injunction and so on and give it to the registrar? Would you trust him to that extent?

A. As a judge I am responsible for the whole. Personally I would not leave these things to the registrar.

Q. I had about 700 appeals and by giving certain of them to the registrar I was able to dispose of them very easily.

A. Well, my court is not a heavy one.

Q. Are there any unnecessary appeals that come before you in any of the courts you were?

A. No. Of course in first appeals when dismissed the party goes to the High Court.

Mr. Justice Stuart.—*Q.* Do the district judges interfere in suits where the Court of Wards is concerned?

A. It used to be the case. But now the rule is changed.

Q. Have you sufficient time in which to do your inspection of the subordinate judges court? You have time probably in your present district. But in other places generally?

A. In heavy districts judges probably require one or two assistants. It will be useful to the assistant and useful to the judge also.

Q. Have you directed your attention at all to the suggestion that is being put forward of having benches of subordinate judges in appeals up to Rs. 1,000 only? Have you directed your attention to this question?

A. I have seen the suggestion. But I did not consider it.

Q. Would you like to consider it and let us know later on?

A. Yes, if that would be of service to the Committee.

Dr. DeSouza.—*Q.* Have you gone through the details of the scheme?

Mr. Justice Stuart.—*Q.* The idea is this. You take two subordinate judges who are specially selected men not on account of seniority but as sound men on facts and law. Seniority is not a matter of absolute consequence. They are given power to hear appeals under Rs. 1,000. Their decision is final on law and fact. Of course their decision is final already on fact. If they disagree an appeal will lie as of right to the High Court. They will be directed, if any very important question or point of law arises, particularly if a point arises on which there may be difference of opinion to state a case to the High Court and not decide the case themselves.

A. Are these benches to be in each district?

Q. The idea would be to group them according to the amount of work, so that each group would have sufficient work. You would work upon the standard of what you consider a bench could do as to the amount of work. We are told in some places they could do five appeals a day and in other places four. That could be worked out. Would you let us have a note on that? You need not give your opinion now.

Mr. Gupte.—*Q.* Do you think this will meet with the public opinion? Will the public be satisfied with that?

A. I cannot give an opinion on this now.

Q. We heard the advocate saying that in this Presidency people have come to regard the High Court as a last court where they could get justice. The question has to be approached from that point of view also.

Supplementary memorandum submitted by Mr. F. W. ALLISON, I.C.S., District Judge, Ahmednagar.

I was asked by the Committee to give my opinion on a certain proposal which has been made with the object of speeding up judicial work and of getting some finality.

The proposal as I understand it, was to appoint for each district or group of districts two experienced subordinate judges who would constantly sit together as a bench to hear all appeals up to Rs. 1,000 in value. Their decision (if they agreed) would be final both as to law and fact.

If they disagreed there would be an appeal to the High Court. If any important point of law arose they would be empowered to state a case for the High Court.

2. After mature consideration I am not in favour of the proposal.

3. In the first place I think the opinion of the litigating public would be decidedly against it. There is a strong and long established feeling that the best justice is to be obtained in the High Court: and though the proportion of small suits in the mofussil, which are carried to the High Court, is not large, the loss of the right to appeal to the High Court, if so advised, would be felt as a real grievance.

4. From a practical point of view the proposal may be called revolutionary. In this district 94 per cent. of the appeals filed are below Rs. 1,000 in value. Thus practically the whole of the appellate work would be transferred to the new benches. I have a high opinion of subordinate judges as a class and I think the standard of their ability is steadily rising: but I seriously doubt whether it would be possible to select from the present cadre in this Presidency sufficient subordinate judges to fill the proposed benches, who would be fit to perform this responsible work. Even if it were possible, I see no reason to suppose that the decisions of these benches would deserve or receive the same estimation in the public opinion as those of an experienced district judge.

5. The practical effect on this Court would be that the district judge would hear on an average not more than three civil appeals a month, and nearly half his working days would be idle. In a district like Ahmedabad the criminal work is very heavy and might occupy the whole time of one or two judges —but in the average district the result would be much the same as here.

6. I understand that the High Court would have no power to interfere in revision with the decisions of these benches. If the High Court were to have revisional powers and were to admit revisional applications on points of law, the number of such applications would be probably almost as numerous as second appeals are at present.

Mr. C. N. MEHTA, District Judge, Broach.

Written Statement.

1. A. *(ii)*

Original suits— (*a*) Title, one year.
(*b*) Money, six months.

Regular appeals, one year.

Civil miscellaneous appeals against orders, three months.

Small causes, six months.

B. Claim proceedings, six months.

2. Yes. The main causes of the delay are:—

(1) The presiding judges usually keep no check on the cases becoming old

(2) The general tendency of litigants (who do not expect to succeed) is to put off the evil day, and they try every stratagem for delaying the proceedings.

(3) The unreliable ministerial agency contribute to delay by delaying service of notices or summonses.

(4) The social system of joint Hindu families and the Muhammadan Law of inheritance make it necessary very often to have a large number of persons on record, all of whom have to be served with summonses before a suit becomes ripe even for raising issues.

(5) Unscrupulousness of pleaders and verbosity of pleadings and long examination of witnesses.

(6) Cumbersome provisions of the Civil Procedure Code which have been so framed as not to prejudice an honest litigant, but advantage of which is almost invariably taken by a dishonest party. Before framing issues in a contested suit or before commencing to record evidence in any case, the judge should be made to examine the parties invariably and should not omit to do so (except for reasons to be recorded in writing), so that he might grasp the exact points on which evidence is required: Power should then be given to the judge to enquire which of the witnesses will speak on which of the material points in difference, and to dispense with those of the witnesses whose evidence appear to be irrelevant to those points.

(7) The Law of Limitation, which requires an application for execution or step-in-aid every *three* years, gives rise to a number of merely formal execution proceedings which are fruitless. The necessity of this should be done away with: it being left open to a decree-holder to present a *darkhast* for execution at any time he believed there was a chance of getting satisfaction of his decree.

(8) Often judicial officers come to the bench without any training; they do their work without confidence and play into the hands of the pleaders and write *long* judgments wanting in lucidity and precision.

(9) Judges have to record the substance of deposition of witnesses in English. This necessity makes them slow to have a proper grip over the facts of the case and thus causes delay.

(10) A considerable time of the subordinate judges is occupied in the performance of work which is mere routine, such as adjourning cases on the ground of non-service of notices, directing summonses, etc., to be re-issued, ordering the issue of execution notices and passing orders in uncontested matters, all of which can be left to a reliable subordinate, such as a subordinate judge under training.

3. (1) Judges should be made to take a personal interest in their file. They should keep statements of arrears (of cases over six months' old) and delay statements always ready on their table for reference and should fix dates of hearing themselves. They should ascertain facts with a tenacity to do justice and with a quick grasp, stopping dishonest delays with a high hand.

(2) In original contested cases the judge should as far as possible examine the parties and narrow down the issues: and then check the *darkhast* of witnesses in that light, disallowing all redundant or irrelevant evidence: and should write a lucid and short judgment.

4. No.

5. Yes: they should be made to work as bench clerks to competent sub-judges or district judges for a period of two years before appointment as district munsifs. And those subordinate judges or district judges under whom such persons may be posted should be instructed to make them study all cases fixed before them, so that they may be able to follow intelligently the proceedings in court and the judgment finally delivered by the judge.

6. No: in the Bombay Presidency the judicial officers are not transferred too frequently.

7. Efficiency can be tested not by the number of cases disposed of, but by the amount and *quality* of work performed. For this, his monthly returns as well as judgments delivered by him in contested cases should both be examined. In addition to the usual columns of monthly returns, every subordinate judge should show therein in how many and which of the contested suits disposed of during the month judgments were written, so that the district judge could call for those judgments and satisfy himself about the worth of the subordinate judge.

I would divide the local limits of each subordinate judge's jurisdiction in such a way as to ensure an equal distribution of work among all: and then would insist on his keeping his file well in hand and would not give him help unless quite satisfied that he had done his best and that the arrears were not due to his idleness.

8. Yes. Usually all important litigation is in the hands of a few practitioners at the top: and courts have to wait for them.

9. No. But I am in favour of (1) extending the small cause jurisdiction of subordinate judges up to Rs. 1,000: and (2) bringing a larger number of suits within the purview of the small cause jurisdiction by amending the schedule of the Provincial Small Cause Courts Act.

12 and 13. *Administrative* work must remain with the district judge. But he can be relieved of miscellaneous *judicial* work (except probate, etc., in which his judgments are *judgments in rem*) including land acquisition proceedings, all of which can go to the first class subordinate judges.

14. It is not desirable to go beyond the provisions of the D. A. R. Act with regard to village munsifs and conciliators. The difficulty is to get reliable men for the honorary work.

15. I would include within small cause jurisdiction: (1) suits to enforce simple mortgages by sale of the mortgage property, (2) suits relating to partnership with a capital not exceeding Rs. 1,000, and (3) suits for rent of immovable property between a landlord and his tenant based on a registered rent-note or where there has been a previous decree establishing the relationship and the rate of rent.

16. (*a*) Yes: the procedure laid down in Order 37, Civil Procedure Code, can be followed.

17. No.

18. No.

20. Yes; but second appeals on questions of fact are not allowed. And an extended use of the power of summary rejection will have a salutary effect, instead of curtailing the right of second appeal.

21. No.

22. No: Fidelity of the judge must be relied on.

23. No: I don't think so.

24. In the way indicated by me in answer to Questions 2 and 3.

25. Not necessary to adopt the provisions of section 106 of the Transfer of Property Act, the provisions allowing substituted service and other provisions of Order V, Rules 12 to 15 and 17, being sufficient.

26. The forms of plaints given in the Civil Procedure Code are adhered to generally. I would suggest no penalty for non-adherence thereto, as under Order VI, Rule 5, Civil Procedure Code, for non-compliance with an order to amend the pleadings it is competent to the court to dismiss the suit altogether.

27. They generally err on the side of prolixity.

28. The use of post office for service of *defendant's* summons should not be extended rapidly, as in case of wrong service there is the danger of an *ex parte* decree. That agency can be freely used for service of *witness*-summons.

29. Where a party is represented by a pleader, service on the pleader throughout the pendency of those proceedings would be enough: but where the party appears without a pleader, he should be made to give his address, service at which should be deemed to be good service for all purposes.

30. I do not approve of this suggestion.

31. *Vide* please clause (6) of my answer to Question 2.

32. Very rarely utilized. It is very technical and dilatory. My suggestion is that stated by me in clause (6) of my answer to Question 2.

33. Yes: but I am not in favour of putting off the summoning of witnesses until after such an examination of the parties, in all cases. For, it might happen that parties may not appear for such examination for a long time: and in such an event it would be undesirable not to raise issues or summon witnesses for final hearing. Every effort should be made to examine the parties on the first date of hearing before raising issues: but failing that a second attempt should be made to examine them before beginning evidence. The judge will then be in a position to know which evidence or witnesses are redundant and dispense with them accordingly.

34. Yes.

35. Yes: the means suggested by me in clause (6) of answer to Question 2.

36. In *ex parte* proceedings only *affidavits* should be the primary mode of proof: otherwise the provisions of Order 19, Rule 1, Civil Procedure Code, are quite appropriate.

37. It will be difficult to fix a time-limit arbitrarily.

38. No.

39. Yes: One of the joint members or owners can be allowed to sue or defend on behalf of all, Order I, Rule 8, being modified to suit this.

40. It is difficult to cast such a duty on the legal representative. But where he had been once served with a notice to be admitted, if he liked, as a party along with the alleged managing member of his family and failed to appear and be admitted, then in the event of the death of that managing member, such a duty could be cast on him.

41. This is a contributory cause of delay. I approve of the suggestion.

42. Not at all.

43. Verbosity is noticeable among fresh and inexperienced subordinate judges. They should be given a sound training before appointment as indicated in my answer to Question 5.

44. Not always or usually.

45. Not always: it certainly leads to delay. Judges should be made to take a keen interest in the manner shown by me in clause (6) of my answer to Question 2, and my answers to Questions 3 and 7.

46. No. Pleaders usually avoid giving any definite information beforehand.

47. Yes: sometimes this is used as a stratagem to prolong the proceedings. It is difficult to add to the powers of the commissioners, who usually don't know the facts of the litigation or the points really at issue. Nor is it desirable to insist on written interrogatories in all cases.

48. May be of some effect. Amount of *day* costs is no check.

49. Very often, *not*. In a big case it is difficult to secure the presence of *all* witnesses simultaneously. The best method in my opinion is that shown in clause (6) of my answer to Question 2 and clause (2) of my answer to Question 3.

50. Yes.

51. In large towns like Ahmedabad, a separate file might be kept for commercial suits which could be entrusted to a special subordinate judge.

52. None.

53. May be extended.

54. Can be invested.

55. No harm.

56. (*a*) Should not be curtailed:

(*b*) I am not in favour of *one* year:

(*c*) I agree.

I quite approve of the suggestion to do away with the necessity of filing *darkhasts* for execution every three years.

57. I am not in favour of altering section 66 in the manner suggested.

58. It will be some relief to the judgment-debtors: but a majority of the judgment-debtors are illiterate agriculturists who generally confide in the decree-holder sowkars and make payments *privately*. I am against the rule that a payment not made in any of the manners suggested should not be recognised by the executing court.

59. No objection.

60. No objection.

61. The provision about the issue of a special notice is salutary: it gives him the option to satisfy the decree.

Clause (2) is a safeguard where it is feared the judgment-debtor might dishonestly evade execution. This rule should not be deleted.

62. It can stand as it is.

63. Some of these notices can be dispensed with.

64. The stage of attachment is quite different from that of sale. All that is attached may not be advertised for sale. Therefore writs of attachment and sale proclamation should issue separately.

Execution may continue for 12 years: it is hard on pleaders to make them responsible for such a long time.

65. No. Unless the village officials are made responsible to the judicial officers, the system will not work well.

66. (*a*), (*b*), (*c*), (*d*) In my opinion it is not necessary to complicate the issues in the suit in the manner suggested. Easy mortgage-suits would thus be made complicated and their disposal unnecessarily delayed; Order 34, Rule I of the Civil Procedure Code with its explanation is quite sufficient in my opinion.

(*e*) No. Time is necessary to allow the mortgagor to find money.

Final decrees appear necessary. Personal decrees can be passed along with the decrees for sale, conditionally on the mortgage property failing to realize the full decretal claim of the mortgagee.

67. Sometimes delay like this does take place. The appellate courts should allow stay very sparingly. It would be difficult to assess the compensation due to delay: and exemplary damages would be still more difficult to assess.

68. No: this power is seldom abused.

69. Yes: but that is a necessary evil. There is no avoidable delay in the disposal of insolvency petitions, but the receiver's management is necessarily slow and tardy and not quite free from underhand dealing.

Subordinate courts can be invested with insolvency jurisdiction wholly under section 3 of the Provincial Insolvency Act, 1920.

70. No: execution proceedings are seldom delayed by absconding.

71. None: they all appear to me quite necessary.

72. Yes: proof by an attesting witness appears necessary and onus to disprove a registered document should not be thrown on the other side without due proof of its execution.

73. No. Certificate is necessary.

74. I am not in favour of making it more stringent except Articles 176 and 177 of the Schedule 1 in which I would cut down the period to two or three months only.

75. All customary law might be codified. All sects claiming a special law other than the law of the religion which they profess may be similarly pinned down to the law established by custom. Codification of Hindu and Muhammadan Laws might be attempted.

76. No.

77. I am not in favour of such a provision.

78. I do not agree: the law should not be made so tight.

79. No.

80. I do not accept this.

81. Such questions should be left for the decision of the court.

82. In suits for declaration or injunction falling under section 7, clause (*iv*), sub-clauses (*c*) and (*d*) and in suits falling under sub-clause (*e*) the plaintiff should be made to pay court-fees according to the value of the subject-matter of the suit.

83. Apparently not necessary and no justification for a different treatment.

84. I would not make it a penal offence, though if in any instance I found it to be an unconscionable bargain, I would avoid it.

85. No. No reference should be allowed to be made by the court except with the consent of both the parties.

86. Yes. Codification and amendment of all laws every five or ten years, in view of the case-law: and prohibition to relay on any decision in the law reports which is prior to the last amendment of the Act.

87. Yes: Hindu and Muhammadan Laws including their customary laws and the personal laws governing special communities like the Molesalam girrasias and Bohras of Gujarat.

Supplementary Memorandum.

From C. N. Mehta, Esq., District Judge, Broach, to the Secretary to the Civil Justice Committee, Bombay, dated the 29th August 1924.

With regard to the suggestion that appeals arising out of claims not exceeding Rs. 1,000 in value might be tried by two subordinate judges sitting together as a Bench and that there should be no second appeal to the High Court in the event of their agreeing in their decision, on which I was asked by the Committee to give my opinion, I have the honour to state after mature consideration that I am *not* in favour of this proposal for the following reasons:—

Firstly.—A very large proportion of the appellate civil work of the district judge will thus go to the said Bench, leaving very little to the district judge whose spare time will have to be employed elsewhere.

Secondly.—The opinion of such a court will not inspire the same confidence in litigants as the opinion of an experienced and impartial district judge and the opinion of the High Court.

Thirdly.—The point of *res judicata* would be made more complicated: *e.g.*, suppose in a rent suit based on title to immovable property, such a tribunal gave one decision: and there arose a second litigation based on title pure and simple: and first appeal lay to the High Court. In that case it may be a question whether the High Court would be bound to accept the opinion of the said tribunal even on a question of mixed law and fact as final. Supposing the answer is in the negative (because the said tribunal was not competent to try the second case) and the High Court decided otherwise, it would shake the confidence of litigants in the administration of justice and might even give rise to speculation in litigation?

Fourthly.—There will be a chance of conflicting decisions by different courts in the same Presidency even on questions of law.

Fifthly.—If the High Court were given the power of revision against the decision of the said tribunal, then the number of such applications would probably be as numerous as second appeals.

Mr. C. N. MEHTA, District Judge, Broach, called and examined on Friday, the 22nd August, 1924.

Mr. Justice Stuart.—*Q.* You are at present district judge at Broach?

A. Yes.

Q. How long have you been there?

A. For the last five years.

Q. How many courts have you under you at Broach?

A. Only four sub-courts.

Q. And how many of these at headquarters?

A. Two.

Q. Your own and two other courts?

A. Yes. Formerly there were three and now we have only two.

Q. Is your criminal work heavy?

A. The Broach criminal work is not heavy but I have to go to Godra to do sessions work of the Panchmahals district.

Q. You are then sessions judge both of Broach and the Panchmahals?

A. Yes.

Q. How many days in a month you usually spend on your criminal work?

A. Most of my time is taken up by the criminal work.

Q. How many days in a month?

A. Two-thirds of my time is taken by the criminal work and the rest one-third is left for the civil work.

Q. Is that one-third sufficient for the civil work?

A. I think it is quite sufficient and therefore I have suggested that the civil appeals of Panchmahal should come to Broach.

Q. Are not your appeals behind hand?

A. No, therefore I have suggested that the Panchmahal appeals should come to me.

Q. You are underworked then, but your list of pending appeals is very high.

A. No, it is 78 or 79, I think.

Q. I am talking of the year 1922. You are better off now?

A. Yes.

Q. Then you managed to clear off all these pending appeals?

A. Yes, I am still underworked.

Q. With regard to the office work, have you very much office work to do in Broach?

A. No.

Q. Have you not to see the accounts, etc.?

A. No, minors' work I have to do myself because I have not got any Registrar.

Q. How long does that take?

A. An hour a day.

Q. Do you have to check the entries in the civil deposit or treasury register? When a decretal amount is paid into the treasury has not the district judge in Bombay, to check the figures?

A. No.

Q. Who does this work?

A. It is done by the nazir of the court. The register then goes to the subordinate judge who looks into it.

Q. Have you not then got the system in Bombay by which the district judge checks the work of his subordinate judge in respect of accounts?

A. No.

Q. If the nazir brings the books to you to sign?

A. My nazir is a subordinate of the subordinate judge.

Q. But one has to initial?

A. I initial my own accounts and the subordinate judge initials his accounts.

Q. Do you have very much general correspondence?

A. Not much.

Q. I mean letters to the Government or to the High Court.

A. Very few.

Q. On the whole your office work is not very heavy?

A. I suppose so.

Dr. DeSouza.—You have informed the Committee that Broach is one of the lightest districts.

A. I have to.

Q. Are your subordinate courts equally well off? Are they not overworked?

A. I find that the first class subordinate judge is in arrears.

Q. Yes, I find that he decided 98 contested cases and has got 92 cases pending over a year. He has a year's congestion in hand.

A. That is the reason why I objected to his being invested with first class criminal powers.

Q. When would you expect an important case in Broach to come on for hearing after its institution if it is in the court of the first class subordinate judge?

A. It all depends on the man at the spot.

Q. I have got one Broach case with me. This suit was brought by a person who succeeded under a will. He brought this suit against the executants who were keeping him out of his property. This was instituted on the 22nd March 1916 and did not get on to evidence till August 1918 and was decided on the 25th January 1919. It took just under three years to obtain a preliminary decree and for the taking of accounts from the executants.

A. It was abnormal.

Q. Abnormal good or bad?

A. Bad.

Q. It would not usually take as long as this. Do you think that it would ordinarily take less than three years?

A. Yes.

Q. You have been hearing the suggestions of Mr. Allison with regard to the benches. Would you like to give your opinion on that point or would you like to give that later?

A. I have not considered that point.

Q. But would you like to give your opinion?

A. Yes.

Q. Do you agree with Mr. Allison that the appointment of registrars would be a very useful thing?

A. Yes.

Q. What is your experience of the subordinate judges in matter of hearing suits *de die in diem?* Do you find that if they really once commence evidence they go on with it or are they apt to break it off?

A. I think they generally break the rule and especially the pleaders want adjournments. When an adjournment is granted they come with applications for additional evidence.

Q. The thing is this. You call four witnesses and hear three and then adjourn the case for a month. The pleaders put in an application and on the adjourned date he brings in ten more witnesses and so it goes on for quite a long time?

A. Yes.

Q. Can you stop that by inspection?

A. The district judge can only give advice.

Q. You have got enough opportunities of knowing what they are doing?

A. Yes.

Q. Do you get in Bombay statements of delays from your subordinate courts?

A. Yes, we do, for over year old cases.

Q. Does this statement show exactly what is happening every day?

A. It gives only a general outline.

Q. It does not contain any abstract of order sheet?

A. No.

Dr. DeSouza.—Surely they do.

A. It gives only a general outline—issues framed on such and such date, fixed for hearing on such and such date and so on.

Mr. Justice Stuart.—It does not say "written statement is not ready, adjourned for a month; written statement again not ready, adjourned for another month, and then pleader absent on a wedding," and so on.

A. All these details are not given.

Chairman.—*Q.* Have you any idea about improving the process-servers in this Presidency? Have you any practical and concrete suggestions that you would like to put forward?

A. I do not think that I can suggest anything. Of course it is only the supervision that we want.

Q. You think that supervision is wanted, that it should be consistent and uniform, and thus you will be able to get better work?

A. Yes.

Q. Do you think that undertaking of these minors' estates by the deputy nazir is really necessary?

A. You mean supervision by deputy nazir?

Q. Yes.

A. I think it is necessary.

Q. Do you think that the district judge is a suitable person to control somebody who is in charge of the actual property of the minor?

A. Personally I am disgusted and I think that it should better go to another man who is not a judicial officer.

Q. It interrupts the work of the district judge and it is entirely incompatible with his position as a judicial officer because under the Guardian and Wards Act, he has to determine the rights of the parties?

A. It does not so seriously interfere with his judicial duties, but, of course, this is the work of an administrative officer and not that of a highly paid judicial officer.

Q. When you go to your court how long does it take you to go through formal papers that you have to sign?

A. If I exclude " minor " work it takes only fifteen to twenty minutes.

Q. And the " minor " work takes about an hour every day?

A. Yes.

Q. What about insolvency, is that working well?

A. It is a necessary evil.

Q. It is because people come in, defraud their creditors, get white washed and then come again?

A. Of course that is at the bottom of each application for insolvency.

Q. Do you find that a receiver manages to get assets?

A. The whole management is delayed.

Q. What is your system here, have you got an official receiver?

A. No.

Q. You appoint any pleader, who is willing to take it *ad hoc*?

A. Yes.

Q. Do you not think that if a permanent man is appointed to do this work, it would lead to some improvement?

A. It will certainly be an improvement.

Mr. Gupte.—Q. In your district can the provision relating to summary procedure be extended?

A. In a few cases it can be.

Q. In suits on promissory notes?

A. Yes.

Q. Your district is a cotton district?

A. Yes.

Q. Can it be extended to pleas of liquidated amounts?

A. If it is not liquidated amount, as for instance damages based on contract, then I would not extend it.

Q. I am talking of suits on *khata*?

A. To that it can be.

Q. Have you considered the advantage of service by post?

A. I think I have expressed myself in favour of that in my memorandum. I would not, however, be in favour of extending that system to the defendant's summons. It should be done cautiously rather than rapidly.

Q. Will it not work well in your district town of Broach itself?

A. I would not send the defendant's summons by post because there would be a room for fraud.

Q. Is that put in practice now?

A. Yes.

Q. Have you had any application made to set aside?

A. No.

THE BOMBAY BAR ASSOCIATION.

Written Statement.

1, 2, 3, 4 and 5. The question of speedy justice depends largely upon human nature, upon the ingrained habits of the people and upon the peculiarity of Indian conditions. In the Town and Island of Bombay, the mercantile community does, for obvious reasons, demand prompt and speedy justice as well as efficiency. But in the mofussil what the people desire is efficiency and a fuller hearing. The only effective remedy seems to us to lie in having a really efficient judiciary. An efficient judiciary may be expected to protect the administration against all avoidable dilatoriness. For

this purpose the recruitment of the different grades of judicial officers should, we think, be made as far as possible from practising lawyers of not less than five years' standing.

We would suggest that the period reasonably required for Commercial causes should be four months, long causes nine months to a year and for short causes about six weeks. We think that certain types of suits such as suits for specific performance, suits in which injunction is prayed for, should be given priority over other suits. The period required for first appeals to the High Court should be a year and a half, second appeals one year, miscellaneous appeals to the High Court six months.

In long causes and testamentary suits there is delay. In our opinion it is due to the enormous increase of litigation since the Armistice and the insufficient number of judges to deal with the increased work.

6. Yes.

7. The officers who administer justice should be encouraged to seek and find their reward in the quality of their work but not in the number of cases they dispose of.

9. No.

12. Not necessary.

13. No.

15. No.

16. (*a*) No.

17. Yes.

18. We do not think so. People of this country have come to regard the right of appeal as a valuable right and in our opinion nothing should be done to curtail this right.

19. (*a*) No.

(*b*) In the Bombay High Court no Letters Patent appeals are allowed against the order of a single rejecting an application in revision. As regards the rest of the question we do not approve of the suggestion.

20. No.

21. No.

22. It is duly and systematically exercised.

23. No.

24. As regards the trial of suits in the High Court we do not think any change is necessary. At present a certain class of suits are heard by the same judge, for instance, commercial suits, rent suits, testamentary suits. We think that in the small causes court a suit once begun should be heard *de die in diem* and finished.

25. Greater use of service by registered post may be made.

26. The forms of plaint in Bombay are fuller. They contain all the correspondence, copies of documents and accounts. We think that the conditions here require fuller pleadings, but prolixity should be discouraged, and if the pleadings are unduly prolix, costs should be disallowed. As regards the forms of plaint given in the Code of Civil Procedure, we think they are good so far as they go but they do not go far enough.

27. No.

29. Yes. As a matter of fact parties appearing in person in suits on the Original Side of the Bombay High Court have to give to the Prothonotary the addresses at which all processes are to be served.

30. Yes. The suggested procedure is in force in the Bombay High Court where summonses are served by clerks of the plaintiffs' attorneys who are appointed special bailiffs by the sheriff.

31. The practice prevailing on the Original Side of the Bombay High Court works satisfactorily.

32. Order 10 does not apply to the High Court. As regards Order 11 it is made use of except as regards interrogatories. Order 12 is not used as extensively as it ought to be. We think that this is due to neglect. The remedy seems to be to disallow the costs of such part of the hearing as is taken up in proof of facts or documents which have been obtained by notice to admit or interrogatories.

The provisions of Orders 11 and 12 are not sufficiently availed of in the mofussil. This neglect may possibly be due to want of sufficient instructions and also to the system of payment of fees to the pleaders. The remedy lies in the High Court enacting rules and embodying them in the civil circulars.

33. No.

34. Yes.

35. No.

36. We accept the suggestion. The High Court rules sufficiently provide for the use of affidavits in various matters where proof in that form can be reasonably given.

37. There is no standard by which these things could be measured. Moreover, the remedy might be worse than the disease. It might lead to prolongation of the proceedings by frequent protests and by applications to the appellate court for remand.

38. The application of Order 37 of the Code has been recently extended by the High Court. Order 37 has been made applicable to suits mentioned in section 128 (2) (*f*), (*i*) except suits on a trust. This we consider sufficient. It is not advisable to extend it to the mofussil.

39. We do not think the principle should be extended except to the extent of enacting that the manager of a joint Hindu family may sufficiently represent its members in regard to monetary transactions of the family.

40. We prefer the existing practice.

41. No. The High Court Rules, we think, are adequate for the purpose.

42. Such a practice is always discouraged in Bombay. See the observations of Jenkins, C. J., in I. L. R., 30 Bom., at p. 186.

> "*Ex parte* orders should be granted with the greatest caution and where rapid action is desired, it is always possible under the rules of the Bombay High Court to serve with leave short notice of any application to the Court."

We are not aware that this evil exists in the mofussil.

43. We are not aware that our judgments are unduly long. We deprecate any attempt to encourage judges to shorten their judgments for the parties are entitled to know that their version of the matter is both sufficiently heard and sufficiently considered. It should be made possible to obtain copies of judgments with greater expedition. This is merely a question of increasing the clerical staff.

44. Yes.

45. Original dates are fixed according to High Court Rules. Adjourned hearing dates after the suits appear on boards are fixed by the judges.

47. No.

48. We accept the suggestion.

49. Suits are tried continually from day to day but not for the whole day as the trying judge has generally to attend to miscellaneous and urgent business.

51. Yes. Provision may be made for giving preference to such suits as on the Original Side of the High Court.

56. (*a*) No.

56. (*b*) No. We think it should not be necessary for a decree-holder to apply periodically and that he should be allowed to execute the decree at any time within the period of limitation.

57 and 58. The proposed alterations are not desirable. They might result in injustice.

59. The second proviso to Order 21, Rule 16, may be altered by providing that after such a transfer the decree should not be executed against the other judgment-debtors except with the leave of the court and to the extent to which the court may order it.

60. Yes. We think that Order 21, Rule 21 and Rule 22, should be retained.

62. Order XXI, Rule 26, does not require any alteration.

66. Provisions of Order 34 are adequate as far as the Bombay High Court is concerned and do not require any change at present.

67. There is no such delay in Bombay.

70. The remedy of the judgment-creditor is to apply to have the judgment-debtor declared insolvent. The provisions for arrest and attachment before judgment do not operate effectively, but we think that if the scope of these provisions are widened they are likely to be abused.

71. None.

72. We think not if the document is otherwise satisfactorily proved.

73. Yes. We accept the suggestion.

74. We think the existing law should remain.

75. We think that the court should be empowered to award interest on damages in cases of breaches of contracts.

76. Yes.

77. We think that in the case of partnership started with a capital of Rs. 500 or more, it should be made compulsorily registerable.

78. The present law as regards the doctrine of part-performance as applied in India should be retained.

79. There should be no change in the existing law.

81. Existing law should be retained.

82. No. In our opinion the number of frivolous claims is insignificant in comparison with dishonest and frivolous defences taken up by the defendants.

83. Yes.

84. The existing law as laid down by the Privy Council is sufficient.

85. The provisions of Order 26 of Civil Procedure Code in our opinion are sufficient and may be more extensively used and may be made applicable to other cases.

86. No.

87. No.

The writ of summons has to be served by the sheriff and if the defendant is unacquainted with the English language an official translation has to be prepared. We think it would be better if the writ were prepared by the solicitor and merely sealed by the office and then be given to the solicitors to be served on the defendant. As regards translations of writs they should be dispensed with at any rate in Bombay or private translations certified by the attorneys to be correct should be allowed.

The concise statement is useless. The relief claimed can be seen by looking at the prayer.

We may also point out that a practical difficulty is caused by section 17 of the Presidency Towns Insolvency Act in the way of arresting a debtor who has filed a petition in insolvency after the decree. This section provides that after the making of an adjudication order no creditor shall *inter alia*

commence any suit or other legal proceeding against the debtor except with the leave of the insolvent court. In Madras this section has been construed as applying to execution notices even. (See the decision in the case of C. A. Easwara Iyer *vs.* K. Govindarajulu, I. L. R., 39 Mad., 689), and this decision has been followed by the small cause court in Bombay; so that if the defendant files a petition in insolvency after the decree is passed against him, the plaintiff cannot even take out a notice in execution under Order 21, Rule 37, of the Civil Procedure Code calling on the defendant to show cause why he should not be arrested in execution of the decree. In the Bombay High Court the practice is that such arrest notices are issued, and when the party appears he is directed by the Court to apply for and obtain an *interim* protection order from the insolvent court within a specified time, otherwise the Court makes the notice absolute. According, however, to the practice of the small cause court the debtor has simply to file his petition and he need not even apply to the insolvent court for an *interim* protection order. Thus the judgment-creditor is put to great difficulty. It is, therefore, suggested that section 17 of the Presidency Towns Insolvency Act should by amendment be so clearly worded as to justify the practice of the Bombay High Court, because on the strict wording of the section it may be contended that the ruling in the Madras case, on which the practice of the Bombay small cause court is based, is correct.

We are unable to accept the suggestion that appeals arising out of claims not exceeding Rs. 1,000 in value may be tried by two subordinate judges and that there should be no second appeal to the High Court in the event of their agreeing in their conclusions. Our reasons briefly are:—

(1) It is necessary that final and authoritative opinions on question of law should be delivered by the High Court.

(2) The suggestion leaves room for conflicting decisions by different courts in the same Presidency.

(3) Litigants obtain the benefit of better trained lawyers and judges in the High Court.

(4) The opinions of inferior courts do not inspire the same confidence in litigants, as the opinion of the High Court does.

(5) The suggestion involves increased cost to the State.

(6) Second appeals are not admitted by the High Court for the mere asking. The admitting judge sees that the requirements of the Code of Civil Procedure are satisfied.

(7) The comparatively small percentage of successful second appeals is no sufficient reason for curtailing the right of second appeal.

II.

Opinion of the Bombay Bar Association on the Bill to increase the jurisdiction of the Bombay Court of Small Causes.

We are opposed to the extension of the jurisdiction of the Presidency small causes court to Rs. 5,000 as proposed.

The reasons given for the proposed extension are:—

(1) to relieve the High Court of the necessity of trying suits which should properly be cognisable by a court of small causes, and,

(2) to afford litigants a cheaper and speedier mode of redress.

To deal with the first point, we take it that the necessity of relieving the High Court of such suits is based on the belief that the work of the High Court during recent years has been considerably congested and that the High Court is not able to dispose of suits as quickly as it should. Whilst admitting that there has been a considerable increase in litigation in recent years, as there must be in a city like Bombay with its increasing population and commerce, we do not admit that the work of the High Court has thereby

become congested to the extent it is represented to be in some quarters, or that such increase cannot be and in fact to a certain extent has not been satisfactorily dealt with by means and methods other than the enhancement of the jurisdiction of the small cause court. The increase in the number of suits in the years 1918 and 1919 was principally due to the sudden collapse of the market after the declaration of the Armistice which led many a merchant to repudiate his liability and so resulted in an unusual crop of litigation. Similarly the increase in the number of suits in 1920 and 1921 may be principally attributed to the instability of exchange resulting in a similar repudiation of contractual liability and consequent litigation. Another cause of the increase in the number of suits is due to the Rent Act under which landlords and tenants have filed a large number of suits either in ejectment or to fix the standard rent or to have any other right under the said Act adjudicated upon. These causes of increase in litigation are transient in their nature. It may be said that the bulk of litigation due to these causes has now practically been disposed of. The Chief Justice of the High Court of Bombay recently ordered that suits of 1918 to 1922 should be placed on the daily board in priority to suits of 1923 and 1924. When they were so placed it was found that most of them had been awaiting dismissal having been either settled or abandoned long ago; in many others *ex parte* decrees were passed and in some others consent orders or decrees were obtained. Very few of such suits were seriously contested thus showing that there was really no substance in the said litigation, defences having been put is mostly for the purposes of delay. The rent suits are also found now to be very few and on the expiration of the Rent Act in a year's time they will altogether disappear. It is no exaggeration to say that by the end of the first term of 1924 the so-called congestion of work in the High Court will practically disappear.

3. Assuming that there is a certain amount of congestion in the High Court, we do not agree that the congestion is so great as to justify a transfer of suits to the extent of Rs. 5,000, a transfer which would practically take away from the High Court half the number of suits filed therein during a year. It has been found that out of about 5 to 6 thousand suits that are now being filed in the High Court during one year nearly 2 to 3 thousand are those of an amount less than Rs. 5,000. Nor does it appear to us to be a proper remedy to remove nearly half the number of suits from the High Court in order to relieve its congestion and to transfer them to a Court whose work, if anything, is even more congested. In the year 1923 approximately 33,000 suits were filed in the court of small causes as against about 26,000 in previous years and it is a notorious fact that many a suit in that court, particularly where the amount claimed is more than Rs. 1,000, is not heard and finally decided until six months or even a year after it is filed. On the other hand, the majority of short causes both *ex parte* and congested—and suits where the claim is below Rs. 5,000 are, as a rule, filed and tried as short causes—are disposed of by the High Court much quicker.

4. The Bombay Government had dispensed with the additional judge in the small cause court on the ground of retrenchment. The work in the said court is now so much in arrears that Government is constrained to make provision in the present budget for an additional judge again as from April of this year. The proposed transfer of jurisdiction to the said court would necessitate at least three more judges being appointed solely for dealing with the extended jurisdiction and such judges we take it would be given higher salaries than what the small cause court judges are given at present. Moreover appeals from the small cause court in the extended jurisdiction cases would constantly take up the time of two judges of the High Court sitting in appeal and thereby cause a waste of judicial power so far as the work of the High Court itself is concerned. Would it not be a better and cheaper remedy to appoint one more additional Judge, as recently proposed, in the High Court itself?

5. We cannot agree that the jurisdiction proposed to be transferred should properly be cognizable by the small cause court. The small cause court as

its name indicates should deal only with matters of a small amount with a certain amount of despatch and it is for that reason that it has a summary procedure. To give it a jurisdiction of Rs. 5,000 with all the powers incidental thereto such as discovery the granting of injunctions and the appointment of receivers is to engraft on it a jurisdiction entirely foreign to its nature. With all deference we cannot help stating that both the Bench and the Bar of the small cause court, competent as it is to deal with its present jurisdiction, is not trained and not sufficiently competent to deal with the higher jurisdiction proposed to be given to that court. Efficient administration of justice necessarily implies not only a competent Bench but even more so a competent Bar. Barring a few exceptions we venture to say that the Bar of the small cause court has very little conception of pleadings and is otherwise not efficient enough to deal properly with the said higher jurisdiction.

6. Nor does the commercial world or the litigating public entertain as much respect for the Bench and the Bar of the small cause court as it does for that of the High Court. The public in general have much less confidence in the judgments of the small cause court than they have in those of the High Court. It is a notorious fact that litigants prefer to have their cases tried by the High Court even though they may have to incur more costs. This is evidenced by the fact that many suits even now are filed in the High Court wherein the claim is between Rs. 1,000 and Rs. 2,000. This is further evidenced by the fact that landlords have preferred to file suits against their tenants in the High Court suits wherein the annual rent has been not only below Rs. 2,000 but even below Rs. 1,000—even though the High Court has consistently refused to give the successful landlords their costs against the tenants. It is also notorious that many a defendant in the small cause court has availed himself of the present section 39 of the Presidency Small Cause Courts Act to get the suit transferred to and to be tried by the High Court.

7. We now come to the second reason which is that by the proposed transfer of jurisdiction litigants would get a cheaper and speedier mode of redress. In our opinion the mode will neither be cheaper nor speedier. As regards the cost of High Court litigation it must be stated that generally speaking it must necessarily be higher than the cost of litigation in an inferior court. As regards the costs, however, in short causes—and suits below Rs. 5,000 are mostly filed as short causes—it must be stated that it is far from being exorbitant. An *ex parte* short cause of whatever amount does not cost more than about Rs. 300. A summary suit on negotiable instruments does not cost more than about Rs. 200. If suits of this kind were filed in the small cause court the *ad valorem* fee on Rs. 5,000 alone would be over Rs. 400. Besides the stamp fee on interlocutory applications as well as professional fees paid to pleaders, solicitors or Advocates would carry the cost much higher. Even when a short cause below Rs. 5,000 in the High Court is contested or transferred to the list of long causes and then heard as a long cause the total cost does not exceed Rs. 1,000 and as a rule falls considerably below that sum. Moreover the High Court of Bombay has recently framed rules applying the summary procedure applicable to negotiable instruments under Order 37 to suits mentioned in section 128 (2) (*f*) (*i*) of the Civil Procedure Code, thereby providing for a much speedier and cheaper mode of redress than can ever be had by the proposed transfer of jurisdiction. The High Court rules, moreover, provide for the filing of partnership or administration suits as short causes if all that is to be done is to refer them to the Commissioner for taking accounts as is the case in the majority of these suits. They can also, if the parties so choose, be filed by way of originating summons.

8. The desire to have competent professional assistance is generally stronger than the desire to have cheap justice. Litigants will in all probability seek the assistance of solicitors or counsel who will naturally charge special fees for going to the small cause court. The result of what we have stated above is that the cost in *ex parte* matters below Rs. 5,000 in the High Court

is certainly less than what it will be in the small cause court and that the cost in contested matters will on the whole be not less, in all probability, in the small cause court than it is in the High Court.

9. Nor do we think that justice will be speedier so far as suits below Rs. 5,000 are concerned. These suits are at present distributed among six Judges sitting on the Original Side of the High Court and in the majority of cases, being filed as short causes, have precedence over other suits above Rs. 5,000. In the small cause court they will have to be tried by 2 or 3 judges with less experience and despatch than what the High Court judges can bring to bear upon their work. There is undoubtedly some truth in the cry of delays of the law in India. So far, however, as the Bombay High Court is concerned, such delays are entirely due to the failure of Government to meet the demand for the increase of the personnel of the High Court Bench and the administrative staff of the Court so as to enable it to deal with the increase in litigation. We agree that the administration of justice should, as far as possible, be expeditious. But we firmly maintain that in the pursuit of despatch there should be no sacrifice of justice and that if it came to a choice of evils we would unhesitatingly prefer the administration of tardy justice to that of speedy injustice. We respectfully submit that the proper remedy is not to transfer a higher jurisdiction to a lower court but to increase the number of High Court Judges and the administrative staff of the High Court.

Messrs. H. C. COYAJEE and N. P. ENGINEER, Representatives of the Bombay Bar Association, called and examined on Monday, the 25th August, 1924.

Chairman.—You represent the Bombay Bar Association?

A. Yes.

Q. Now the first thing to deal with is the length of time that cases might reasonably take. I see you say that commercial causes should take four months, long causes nine months or a year and the short causes about six weeks. You also point out that suits for specific performance and injunction require special expedition. But as regards appeals I see you say that first appeals should be disposed of in a year and a half and second appeals within one year. Of course a year and a half about first appeals would be a great deal better than the present state of things, but I understand sometimes second appeals take about two and-a-half years. I think one and-a-half years is too long in most of the first appeals?

A. That is because sometimes translations are necessary. In the mofussil they do very often without translation, but here, in the High Court, you need translation. This translation demands some time, and after translations are ready parties take copies and paper books are prepared for the use of the court and copies are supplied to the counsel engaged and this whole affair causes a little delay which is not caused in the districts.

Q. But still in an ordinary case would not a year be sufficient?

A. If you start with clean hands that is with no arrears of translation, etc., I should think one year should be enough. That is my personal view, but the trouble is with regard to translation in the translation department.

Q. What I am thinking of is to fix an ideal figure?

A. I think ordinarily one year should suffice.

Q. Of course, if you cannot get your translation out, you cannot get your appeal disposed of in a year's time?

A. Yes.

Q. As regards second appeals, I see you put down one year. Do you not think, as an ideal figure, that is rather a little long?

A. I should think so.

Q. If the man had one trial in the lower court, one appeal in the district court and if the second appeal is also going to take another year, would it not make the business a long one?

A. Yes.

Dr. DeSouza.—I find the average duration of second appeals in Bombay in 1922 was 417 days and there were many appeals which took more than 417 days.

A. That depends upon the number of courts that were there to dispose them of. Some matters may be ready for hearing and may not be brought up only because you have not got a sufficient number of judges, but we have nothing to do with that question. If we have a sufficient number of judges, I entirely agree with the learned President, that ordinarily second appeals can be disposed of in nine months. That would be a reasonable period for their disposal.

Chairman.—*Q.* Never mind the present condition of affairs, the present number of judges, the present congestion in the translation department. What we want to know is the ideal figure. We should aim at that. Do you think that if an appeal can be disposed of in a year, it will be satisfactory?

A. It will be satisfactory, no doubt, but the question is whether it is possible or not.

Q. That is not the question. We want to know what kind of expedition the public has a right to have?

A. I think one year would not be too short if that can be managed.

Q. About second appeals, is there any reason why second appeals should not be disposed of within six months from the date of their institution?

A. If we have sufficient number of judges, I see no reason why second appeals should not be disposed of within six months.

Q. You say one of the causes of difficulty, apart from the insufficient number of judges, is getting paper books ready? What are your other difficulties. First of all take the case of second appeals—What printing have you to do in second appeals?

A. In the case of second appeals judgments of the lower courts and the memoranda of appeals are always printed and then there is translation and copying work of important and necessary documents. It all depends upon the nature of the case as to how many translations are required. This morning I was reading a second appeal. The first appeal was decided by your colleague Dr. DeSouza and there was a heap of papers. The question was one of permanent tenancy of land situated in a talukdari village. There were so many documents which involved points of law and all that demands time and that cannot be done in six months. Then there is another thing. When translations are made preference is given to judges' copies. Copies are first prepared for them and then for the counsel and pleaders.

Q. Where are the copies prepared?

A. For the judges copies are prepared in the office, but the pleaders are expected to have their copies from their clerks who come to court and copy them out for themselves.

Q. Where is translation done?

A. In the translation department.

Mr. Justice Stuart.—*Q.* Would it not be a saving if that was done by the counsel themselves?

A. Parties do make private translations. When I was practising as a pleader I used to sit down and translate important papers myself.

Q. Is it a rule that they must be translated by the court?

A. The appellant's pleader may translate himself, but the translation may not be acceptable to the other side and a question may arise at the time of hearing as to whether the translation is right or wrong.

Q. Exactly the same difficulty can arise in the case of a court translation unless the translation department is perfect?

A. The Privy Council has said it is.

Q. Do you mean to say that translation by the translation department leaves no opportunity for difference of opinion?

A. We dare not differ.

Q. How are documents printed? By whom are they selected for printing?

A. The pleader on each side is expected to know what documents are necessary. He gives a list of documents which are necessary.

Chairman.—*Q.* Does that work satisfactorily in the case of big first appeals? Do you find any difficulty as regards them?

A. I think it is working quite satisfactorily.

Q. Then if a case goes to the Privy Council the paper book has to be printed and you make no exception for any case of any value?

A. No.

Mr. Gupte.—*Q.* As regards the translating work. If a rule be made that the pleader for the appellant should make the translation himself and send that to the other side and in case it is not objected to by the pleader of the other side no official translation is required. Do you think that they will expedite the hearing of the appeals?

A. I don't think it makes much difference. As a matter of fact it is now being done. The translation is made by the pleader of one party and if the other party has no objection that is admitted and if the other party has any objection the matter is referred to the official translators.

Chairman.—*Q.* In practice do you find that cases very often turn upon contested points in translation. You see the translation of little phrases does not really matter much either way and if an honest translation is made it serves everybody's purpose.

A. I think so specially when there is a construction of a will. Ordinarily I think these things do not matter much.

Q. But this difficulty arises as I understand on account of the shortage of staff in the translating department and in the copying department.

A. I believe so. I have not much experience but I think that this is so.

Q. Do you think that if the shortage of the staff is corrected and these departments are put in a position to cope with their work that might solve the difficulty without changing any rules?

A. I think that may expedite matters to some degree.

Mr. Justice Stuart.—*Q.* Is there any translating work done on contract here or is all done by men who are on fixed salaries?

A. The position now is this. You have a permanent staff and that is supplemented by junior members on the Appellate Side and they do contract work.

Q. That is so much for one hundred words?

A. I think so.

Q. Is it possible to supplement that staff?

A. The difficulty is this that very often translation done by the junior men is not so satisfactory as that done by the experienced translators.

Q. I cannot understand why that staff should not be supplemented. Is it not a fact that the translation fee which you have to pay is far more than the amount paid to the translator?

A. I do not know anything about that.

Mr. Gupte.—Translations are generally done by retired translators and they are allowed Re. 1 for a particular number of folios and the rest of the amount goes to the Government.

A. Yes.

Mr. Justice Stuart.—*Q.* I cannot in these circumstances understand why the High Court cannot increase its staff and at the same time make extra money from the translation work?

A. I think that would be satisfactory. I do not see any serious difficulty in the way of doing it.

Dr. DeSouza.—*Q.* Are second appeals sometimes kept back because the translation of documents is not ready?

A. No, I don't think so, but the main reason is the insufficiency of judges.

Chairman.—Coming to the question of the district judges, I take it that your Bar has some experience of the mofussil courts.

A. Some experience of course.

Q. You know that at present certain class of cases are reserved for the district judges. For example, probate work, succession work, land acquisition work, etc., and I understand in Bombay also suits in which the Secretary of State is a party. Now have you any suggestion to make as to whether any work that is now being done by the district judges might just as well be done by first class subordinate judges or second class subordinate judges?

A. As regards succession certificates I understand that the subordinate judges, first class, are being invested with these powers in our province at least, but I can tell you that the first class subordinate judges are probably the heaviest worked judicial officers. That is my idea and I do not know whether Dr. DeSouza agrees with me or not. I would not, therefore, impose anything more on the subordinate judges, first class, but I would rather say that the district judges are more lightly worked than the first class subordinate judges and therefore I would not take any work from the district judges and give that to the first class subordinate judges. Powers as regards succession certificates as I have already told you are being given to the subordinate judges, and I do not see that any relief should be given to the district judges.

Q. Do you think of any better distribution of the work?

A. I don't think of any.

Q. You have not touched upon the point of village panchayat courts. That, however, is an important question. Is there anything which you can tell us as to the prospects in Bombay of getting smaller and simpler suits dealt with at the spot by village panchayat courts? Do you think that that is practicable?

A. I have no experience of these and therefore I would not venture to give my opinion as regards the working of these courts. But I may say that in matters of criminal offences the police is invested with some jurisdiction that would be helpful but I find then that there are constant complaints against the police and there is a good deal of discontent against them.

Q. That does not take us very near to the question of panchayat courts?

A. No.

Q. Now in question 15 we ask about the scope of the small cause courts. Have you been good enough to look at the schedule of the Small Cause Court Act with a view to seeing whether any class of cases are excluded unnecessarily from their jurisdiction? Take first of all the Provincial Small Cause Court Act?

A. The body whom I represent now, whatever my personal opinion may be, is against investing presidency small cause courts with jurisdiction over matters excluded from section 19.

Q. But can you tell us what is the general basis for that opinion, is it because they think that the small cause courts are sufficiently congested with work at present, or because they think that they are not sufficiently competent?

A. People, as a matter of fact, seem to be satisfied if their cases are decided by the High Court. Even now there is an option given to the litigants to go either to the small cause court or to the High Court and very often they go to the High Court.

Q. You are now dealing with the presidency small cause court. Let us take the provincial and take cases within the small cause court jurisdiction and below five hundred rupees. Has your Bar Association considered whether any other item in second schedule of the Provincial Small Cause Court Act is unnecessarily there or whether it can be possible to eliminate particular items from that schedule?

A. I am afraid I am not in a position to give any opinion.

Q. Your general opinion is that the jurisdiction of the small cause court should not be increased?

A. Yes.

Q. Do you think that in this province the sub-registrars—people who register documents—can be given any civil jurisdiction?

A. I have not been able to follow this question.

Q. In some provinces sub-registrars are as a rule a body of men well educated, and in some other provinces they are not able to be trusted with anything. It has been suggested to us—apparently the suggestion is not ours—that these people might be used for disposing of uncontested cases?

A. When will it be decided, whether a suit is contested or not?

Q. I suppose when the time comes for that, when the man enters appearance or happens to be heard?

A. If it is to be decided when the man happens to be heard then the judge can decide the case in three minutes.

Mr. Justice Stuart.—*Q.* How can you get away from this situation? The case must come up before a judge, or a master or somebody of that kind in a court to decide whether it is uncontested or not and it appears to me to be an absolute waste of time, when you find it uncontested to send it to any other man.

A. That is why I put the question as to when it is to be determined.

Q. Of course the only possible reform would be to hand over to the sub-registrar simple money suits up to fifty rupees, whether they be contested or not. I do not say anything to support that scheme but at any rate that scheme would save time. But then we raise the point whether the sub-registrar would be competent.

Chairman.—The reason why I asked you this question was that in answer to question 17 you say "yes."

A. The answer "yes" was given for this reason, if I may explain to the Committee. Our idea is that if it is feasible and if it is uncontested then let it be tried by the sub-registrar. That was the only object for saying "yes."

Q. I thought from your answer that your Bar Association was of the opinion that there was something in the suggestion?

A. We considered it and in the first place we tried to understand the question as best as we could.

Q. The question would be to invest the sub-registrars with jurisdiction to try certain classes of cases which are uncontested to make for their speedy disposal.

A. The moment the thing is brought before the judge and he has wasted some time on it, then he can dispose it of then and there if it is uncontested.

Q. You might have a system by which the defendant might be required to enter appearance.

A. I have explained on what understanding we replied as "yes."

Mr. Justice Stuart.—*Q.* What type of men are your sub-registrars.

A. I have no idea.

(Dr. DeSouza—They are graduates, but not law graduates and their pay ranges from Rs. 80 to Rs. 150.)

Chairman.—Now, let us go to the question of appeal. That is an important question. I see that your Bar Association is against any curtailment of right of appeal.

A. Yes.

Q. Now let us just consider that a little more. I would like you to look at it from this point of view. As regards simple money suits, suits for movables up to five hundred rupees, the law in India is a bit summary and business-like. You have got small cause court jurisdiction over them. As regards bigger suits, suits over five thousand rupees, there again it is difficult to see whether it can be more businesslike than it is, because you get a trial and then you go to the High Court on first appeal, on facts and law. I do not want you to consider the question of these cases, but the difficulty is about the intermediate class of cases. Just at present it is a little difficult to be satisfied with the way in which we are dealing with them. The man gets his trial and then there is an appeal on facts and law to a district judge or a first class subordinate judge. Then we make these findings of facts final, and then there is an appeal to the High Court on points of law. The High Court finds it generally difficult to disentangle facts from law and make up their mind whether it is with the point of law or the facts that there is something wrong, and if there is any question that cannot be answered straightaway, it is very apt to result in a remand, because the High Court is not really master of the facts. Then it comes back again and there might be another appeal from the findings on remand, and in some courts the position is worse—as is in Madras—because all second appeals under a certain value are heard by a single judge and the result is that there is a Letters Patent appeal. Is not there any way in which one can better our present system with regard to these small cases, not of the small cause type? In this province Order XLI, Rule 11, seems to be worked pretty satisfactorily. At any rate I notice that of the cases that got through Order XLI, Rule 11, 224 resulted in appeal being dismissed ultimately and in about 90 cases there was some interference. That is to say, out of two cases that were heard one was interfered with.

In many parts of India of the cases that you get under Order XLI, Rule 11, out of about 100 cases the High Court has to interfere only in about 25 per cent. of the cases. What I am pointing out is that in some courts it is worse. What I am suggesting to you is this. That sort of protection, if it was a first appeal, would not matter very much because you should see whether an interference is required or not. If you are dealing with a third hearing of a case which is a small case—I don't say its money value is always a conclusive test of its importance—when it comes on for a third hearing (which is coming on probably after two years when the case was first heard), don't you think that it is a tremendous waste of labour both to the party and to the court and that the proper thing would be to have a rather stricter scrutiny of second appeals than we do have, before the respondent is called upon to appear? What I suggest is that instead of Order XLI, Rule 11, being looked on as a simple question as to whether there is a point of law, no appeal ought to be allowed to go on unless there is some reason for thinking that a further hearing is really required in the interests of justice. It seems a great pity that 224 respondents should be unnecessarily brought up to the High Court for a third hearing. Don't you think that something could be done to improve that? I don't suggest anything very drastic. I don't suggest that you should stamp out second appeals, merely because of their value. It would be possible in those cases where the mere value of the appeal does not show it to be of a special importance, that the party wanting a third hearing should have to

make some sort of a special case. Do you think your Bar would very much mind if Order XLI, Rule 11, is, so to speak, altered in some such way as that?

A. I will discuss it at some little length. First of all what we call small cases. I will first of all deal with it. No doubt in many of our second appeals probably the value is less than Rs. 300. But that is only what Sir Lawrence Jenkins calls the notional value of the thing and not the real value. For instance, in the paper book which I handed to Mr. Justice Stuart, there the valuation is Rs. 382 for all purposes. But the stake involved is very large. This by no means is an uncommon instance. Therefore, firstly we will have to see what is meant by small cases or cases of small value. Then we must have regard to the interests of the successful respondent. I quite agree that his interests should be sufficiently safeguarded. I think there are two ways of safeguarding that interest. One is that which fell from the learned President about Order XLI, Rule 11. I mean if, for purposes of second appeal it is formulated on the same lines as section 100 of the Code of Civil Procedure, that would be satisfactory. That section 100 lays down the scope and the rights of second appeal. If this is made clearer we can have no objection. That is one thing. The second is this. What is generally heard in favour of the successful respondent is that he is denied the fruits of his victory for a good long time. I will consider it in two aspects—first, money decrees and then immovable property. As regards money decrees in our province for the past 80 years the practice is that a successful decree-holder always executes the decree but he may be called upon to furnish security. So far as my province is concerned, I do not see that the successful respondent is put to any inconvenience. As regards immovable properties, I quite agree that stringent enactment should be made as regards execution of those decrees. I may be permitted to make this suggestion that as regards immovable properties, it may be enacted that a successful party is entitled to execute his decree unless for special reasons to be recorded by the court, the court thinks otherwise. For instance, it may be a decree for the pulling down of a building. Therefore, unless for reasons to be recorded, the court thinks otherwise, the successful respondent may be allowed to get the fruits of his decree. Of course there is some inconvenience, but inconvenience will always exist. For instance, all the world over, in the case of suits, many suits fail and it is not always the plaintiff that succeeds. I have not got the statistics, but that does not mean that courts should be abolished or the powers of courts should be curtailed. There are certain inconveniences which arise out of the fact that justice in these matters is being done by human beings, or in other words it is human administration.

Q. I quite agree with you, but I think there are always two kinds of cases—cases which really require a third hearing because of their importance and cases which do not require a third hearing because of their small value. There are many instances in which litigation is indulged in out of all proportion to the interests of the either party.

A. In the first place the statistics which you have in hand are concerned with recent years. At one time our High Court took a more extended view of the powers of the High Court in second appeals and I have a clear impression that we used to interfere much more freely than we are doing now. But that is another consideration. In the first place a party wants to go to the High Court for this reason. You get a better trained bar and certainly more competent judges. Then again there is one thing more. If you deprive the High Court of this, you deprive the High Court of the salutary powers of control. I attach great importance to this fact. The High Court must have control over the subordinate judiciary. I do not think I need trouble you with details. The reasons are quite obvious.

Mr. Justice Stuart.—Q. Would you look at it this way? I premise that it can hardly be suggested that the High Court has no control over provincial small cause court judges. Now is it not a fact that that control is not exercised by hearing appeals from them?

A. When the subordinate judiciary know that the High Court can and will interfere they will do their work more carefully.

Q. But the High Court can and will interfere in the eventuality suggested. It is perfectly possible for the High Court to examine the work of these benches by inspection and if they consider that the work is bad they can and will interfere just as they can interfere in the case of small cause court judges. By this examination they can say that the work is bad and that a certain man is not fit to be a small cause court judge. I have been controlling courts for more than ten years and I know exactly what the work means. Control by the hearing of appeals is not at present a satisfactory form of control, because, before the appeal comes on for hearing, almost invariably the man is transferred to another place and you have to trace him to the next district.

A. If you grant finality, surely there will be relaxation of the High Court control.

Q. Are not findings of facts already final?

A. But still when the second appeal comes up for hearing we can force the judges to consider the matter.

Q. But do you not then force the judges to act illegally? Under the law judges of the High Court cannot interfere in findings of facts whether they are right or wrong. Even if a first class subordinate judge arrives at a perverse finding of fact, how can the High Court interfere? The High Court can say that it is a bad finding of fact but it cannot interfere under the law.

A. But who is going to complain to the High Court Judges that a particular judge is not a good judge on facts and who is going to listen.

Q. I assure you I am always ready to hear complaints against judges who arrived at perverse judgments.

A. But all judges may not be like yourself. Ordinarily speaking my idea is that the High Court should remain in touch with the subordinate judiciary. I do not know whether I am talking of a matter with which the Committee is not concerned.

Q. Not at all we are very interested in it.

A. In the first place it is human nature that if you have some body to look into your work, you will be very careful and do your work properly and secondly I am proud of the judiciary of this province. The majority of them are men of honour but unfortunately lapses have occurred to my own knowledge and have been exposed. Fortunately they are very few but where a few have been exposed it is possible more may occur and if that control is taken away there may be still more instances of that kind.

Q. We agree as to the end, but not as to the means, we both want proper control and proper supervision.

A. The only thing we differ at is that I think this control can only be given by appeal.

Q. I regret to say that curiously enough it is always found that the man who has been dismissed is found to be the man whose judgments are often upheld by the High Court.

A. You have now supplied me with an argument for my statement. It is for this reason that the High Court should have a minute and careful looking into the working of such men. Your point is exactly the same as mine is and we are, I think, now coming closer to the point. The man whom I have referred to and who was convicted some time ago was one of the ablest men and his judgments were most difficult to upset and therefore I say that the High Court should keep its eyes open and not shut.

Q. Your objection to the Bench system is that the parties would be deprived of a reference.

A. That would be one. The second would be that you would deprive the parties of the assistance of a better bar and the benefit of better judges. My third objection to this is that the people now have greater

confidence in the High Court—right or wrong—and I would, therefore, like to leave the matters within the jurisdiction of the High Court as much as possible.

Q. Do you follow what we mean by the Bench system?

A. Not altogether. The idea is that appeals arising out of claims of Rs. 1,000 may be tried by two subordinate judges. But are they to be first class subordinate judges?

Q. The idea is that they should not only be first class subordinate judges but the best selected men in the cadre and men of ability and picked men.

A. Two for each district.

Q. The number would depend upon the amount of the work. There should be a sufficient number of Benches to hear all appeals up to Rs. 1,000. In certain provinces you may not be able to find sufficient men in the service capable of hearing such appeals but then you could get men from the Bar to fill up those posts. I say first class subordinate judges but I do not exclude the possibility of men being appointed as first class subordinate judges from the Bar. I think you would be able to make good appointments from the Bar and I also think you can find in the District Bars many very competent counsel at the end of their career, and you would find them excellent judges on the benches. We can fix their salaries from Rs. 850 to Rs. 1,000 and we consider the position is sufficient enough to bring them in.

A. Then the decision of those two subordinate judges would be final.

Q. On law and facts.

A. Of course the decision of an appellate court is already final on facts.

Q. If the two subordinate judges disagree there will be a right of appeal and if they find any difficult important point of law they will be required to state a case to the High Court. The case which you have brought to-day, I should say, would have had to be referred to the High Court by such a Bench but such cases are not very many. These judges would do nothing else and they would be able to hear appeals within three months.

The matter would have to be considered in every province and it would be a *sine qua non* that if you cannot get officers then you should not have benches. But my impression is that there will be no difficulty about the constitution of benches.

A. I would submit that there is one disadvantage and certainly an inconvenience. For instance you may have in a Presidency like Bombay half a dozen benches of that kind. Then you might have diversity of judicial opinions in different questions.

Q. The reference of the case to the High Court will help the matter. If the bench at place "A" arrives at a different decision from the bench at place "B," the bench at place "C" will say, when the same question comes before it, "we are going to refer the case to the High Court."

A. But see how the law would look in the eyes of the public—three courts deciding the same question in three different ways.

Q. Do you not think that the law looks very much the same now? If you look at notes on section 115 in any commentary on the Civil Procedure Code, you will see how many contradictory decisions there are on that section alone.

A. The point is that the authoritative judgment on questions of law ought to be left to one tribunal and that is the High Court.

Q. What do you say as to the advantage of saving of time?

A. I have practised in the mofussil as a pleader for some years and for a certain number of years as an advocate. I know these delays and I regret them, but so far as my memory carries me, I can say that not a single client asked me "Why is not my case decided yet." I know that there are delays and I do not encourage them, but this is what exists in the habits of the people, of which you must take account, for it is they who are going to suffer and not we.

Q. But there is another difficulty in this matter. Remember a man who has succeeded in the court of appeal and the court below; he does not mind in the least having a right of appeal, but still he is dragged on to the High Court

A. Of course there are such instances.

Q. However, I think we have gone very fully into the matter of these appeals, and now let us go to the next question. I wish you would tell us something about the presidency small cause court, and what you think necessary to improve it. I understand that there is a great congestion and witnesses have constantly to come back again. Have you thought of anything that in your opinion can improve the presidency small cause court?

A. Cases must, as far as possible, be tried *de die in diem*, and for that purpose I am afraid increase in the number of judges is necessary in the small cause court in the city.

Q. Is there any change in the method that you would like to suggest?

A. I think it is summary enough.

Q. I mean the way in which cases are put before the judges by the registrar.

A. Not that I know.

Q. Is there any abuse in this sort of thing, that a person whenever he applies for execution is always met with an application for order of instalments?

A. I have no experience.

Q. Would you think it advantageous or practicable in the mofussil as well as in Bombay if either party were required to put down a registered address, any address he likes, and if service at that address be taken as good service?

A. I think it is advisable.

Q. That the man against whom the decree was passed should be obliged to keep it for a year, or until he paid up the decree, or at any rate till a limited time after the decree?

A. There will be no hardship. I think it is a wholesome suggestion.

Q. Now as regards the use of order for discovery, I understand that everywhere these rules are very little used in the mofussil. Do you think that the young pleader who comes up to the mofussil Bar has got sufficient training in that kind of work and practical knowledge of the Code. Would anything be gained by insisting on his study with somebody in Chambers or his passing an examination after he comes to the Bar?

A. Personally I put forward this idea that he must read in Chambers with a senior pleader for at least one year.

Q. One would like to do that. There might not be enough senior pleaders available and willing.

A. The district judge should see that a certain number of new men are attached to different senior members of the Bar.

Q. That would be a good thing if it could be introduced. Do you think the seniors would take the juniors without payment?

A. They may take them without payment. For, after all they would be serviceable to them to a certain extent.

Q. Do you think that something could be done to give pleaders in the mofussil a rather better practical knowledge, first of all in pleadings which seem to be done fairly badly, and secondly in the discovery sections which they do not seem to understand.

A. I think the judges in the mofussil ought to insist. They may tell the Bar that these matters ought to be given better attention.

Mr. Gupte.—*Q.* Would it not be necessary to have a change in the system of remuneration?

A. Yes. The method of payment would have to be varied. As regards expedition in the mofussil, it is not to the interest of the pleader to prolong the litigation because he is paid by the case.

Q. It is only those that are taken to the mofussil from the High Court or District Court that are paid by the day and otherwise fees are paid in a lump?

A. Yes.

Chairman.—In this province do you get cases of unreasonably lengthy cross-examination?

A. I know pleaders who do it. But they are exceptional.

Q. Of course we want to put down only unduly lengthy cross-examination. Does it amount to a crying evil here? Do you constantly meet with such cases?

A. I don't think so.

Q. Do you think in the case of examining witnesses before commissioners there is a tendency to ask a great many unnecessary questions?

A. Yes; it more frequently happens before commissioners than in courts.

Q. What do you suggest as regards that? Can anything be done?

A. The commissions are comparatively very few in this province and I don't think it is a crying evil. The commissioners have no power to disallow questions.

Q. Could not something be done to stop that? The fact that the commissioner has no power to disallow questions is itself enough to enable the pleaders to cross-examine *pardanashin* women for days and days together.

A. Yes. But the commissioner will be stopped for the time being and an application will be made to the court.

Q. I understand that there is a practice that some judges never give *interim* interest on damages. Would you be in favour of abolishing that?

A. There is no reason why a man, who is entitled to receive Rs. 30,000 to-day as damages and who is kept out of his money for three years, should not be given interest.

Q. As a matter of fact in commercial cases whether it is damages or balance of price or whatever it is, it does not matter.

A. Yes.

Q. You are in favour, I understand, of abolishing Article 182 about steps in aid of execution and allowing the decree-holder to execute his decree at any time within 12 years.

A. Yes.

Q. The only thing about that is this. Supposing in an *ex parte* decree the first attempt to execute it is made 11 years after the decree and the defendant says "This is a perfectly bogus decree. I was never served with summons," it is impossible to enquire into it at such a length of time. Would you make any distinction between decrees according as they are *ex parte* or not?

A. I think that ought to be done to avoid that difficulty.

Q. What would you like to do to avoid that difficulty? You might get an *ex parte* decree in which there has been a previous application for execution which would amount to his having admitted service?

A. As soon as the decree is passed, it might be served on the other party by post and the service recorded by the court.

Q. Supposing the man keeps out of the way?

A. The provisions as to the service of summons may be made applicable.

Mr. Gupte.—If you adopt the provisions as to registered address, that difficulty will be solved.

A. The provisions as to the service of summons may be made applicable to notices also. If the decree-holder satisfies the court that the judgment-debtor is keeping out of the way, substituted service may be effected and the record kept in court. As far as possible that would remedy the inconvenience.

Chairman.—*Q.* Would you tell me—have you ever thought whether it is really practicable in this country to so amend the law as to discourage *benami* transactions,—discourage all those defences and claims where people say "We have executed the document but it was entirely unreal. We had no intent that the document should take effect?" Is there anything that could be done at this time of day to try to discourage the putting of property in other people's names in order to throw cloud upon title?

A. Unfortunately it is difficult to find out a way at present. After educating the people we should bring this about. At present the courts are dealing with a mass of people who are illiterate, guileless and many of them are helpless women. They rather think that the law of *benami* does serve some useful purpose. That is my opinion.

Q. I understand that in many cases in the case of women property is put *benami* in the names of others because they want somebody to go to the revenue court and do the necessary things. Do you think that the honest and legitimate purposes which the system of *benami* is intended to serve could not be equally well served by powers of attorney?

A. The origin of the thing is practically the same as the origin of trusts elsewhere.

Q. Do you think that the legitimate purposes to be served in the case of women by this system of *benami* could not be accomplished otherwise?

A. A woman trusts in a way. The other party will take advantage of the rule we are thinking of. That is the evil which I am considering.

Mr. Justice Stuart.—*Q.* Do you not think that five years' notice would be sufficient to give effect to the rule?

A. Who knows of this five years' rule in the villages?

Q. Do you not think that *benami* transactions do more harm than good to the real purchaser?

A. I does very often. I quite agree. But then at any rate if you were to make a stringent rule, it may work still more harm on honest people, that is the more confiding people, the guileless people and the illiterate people. I don't think that this *benami* business is good.

Chairman.—You say that any attempt to put it down might probably work out greater hardship at the beginning.

A. That is my fear.

Mr. Justice Stuart.—Do you think we shall be taking a bigger risk than that we took when we enacted a rule that mortgages should be registered? Nobody ever thought before of registering them. The poor people who did not know the rule learnt it.

A. There it is to the interest of the mortgagee, who takes care to see that it is registered.

Q. All mortgagees are not very intelligent. I have known some very dull mortgagees?

A. Yes.

Q. Do you think five years' notice will not be sufficient?

A. This *benami* problem exists more keenly in your province than it does here.

Q. I know people here are intelligent. But do they not enter into such transactions?

A. In Bombay the evil is in a lesser degree.

Q. It is also in our province that so often the *benamidar* cheats the money-lender?

A. It is very helpful to dishonest persons.

Mr. Gupte.—Q. About the congestion on the Original Side of the High Court, you know that there are two extra judges working on the Original Side. In your memorandum you say that it is desirable to have selection from practising lawyers on the bench. Can you give me some idea of your own opinion whether it is now desirable to relax the fixed proportion of civilian and barrister-judges which is fixed by the High Court Act?

A. I have not considered that. When I said practising lawyers should be recruited, I meant for munsifs' posts.

Q. You will agree with me that cases on the Original Side tried by civilian judges take comparatively much longer time than cases tried by barrister-judges?

A. I have heard so.

Q. Having regard to the nature of litigation on the Original Side which is mainly commercial litigation you think that it is desirable that it should be tried by barristers and men practising on the Original Side?

A. Yes, commercial cases should be entrusted to barrister-judges.

Q. Having regard to the circumstances if that rule is relaxed, do you think that it will be desirable?

A. I should think so.

Q. As regards taking of accounts by commissioners, it takes a very long time and I hope you will favour the suggestion that more powers should be given to commissioners and more commissioners should be appointed.

Mr. Engineer.—As regards this matter I do not think the delay is greater than it used to be in former days. Formerly it was scandalously great. I do not think the delay is such as to call for any particular notice.

Q. There is one thing more. Would you be in favour of the suggestion that suits of small value should be referred to official referees who would dispose of these suits just as they are disposed of in England under the Judicature Act?

A. I do not think the Bar will approve of this suggestion.

Chairman.—In England cases are not referred to official referees only because they are of small value but because they deal with scientific details, etc.

A. We have got provisions of the Code for local investigation.

Mr. Gupte.—Q. About the extension of jurisdiction of the small cause court, I think you have represented from time to time. Will you kindly give one copy to the Chairman of your representation?

A. I have not brought any copy with me but I will send one.

Chairman.—Q. What is the attitude of your association on this important point? What do you recommend?

A. If there are more cases coming to the High Court, measures should be taken to dispose them of efficiently. I do not want any extension of the small cause court and want to keep all these cases in the High Court and to have them dealt with by the High Court Judges. I would not favour the suggestion.

Mr. Gupte.—Q. As regards summary jurisdiction, will you be in favour of extending the powers of summary jurisdiction in towns like Sholapur and Ahmedabad?

A. I would not object to it. It may be tried with first class subordinate judges.

Q. I understand, at present on the Original Side some delay also occurs in the admission of plaints. If a plaint is lodged, it is not admitted for about three or four days.

A. Sometimes two or three days elapse, but not always.

Q. Do you not think that the question of limitation comes in?

A. In these cases attorneys take special care.

Chairman.—*Q.* Would you mind telling me this. Do you know anything about the litigation relating to piece-goods in 1920? There were large numbers of suits filed by Manchester and other English firms. There was great dissatisfaction among exporters and can you tell me why was it that suits on accepted bills of exchange could not be brought to hearing soon?

A. Because of the congestion in the courts. Nobody could say from the written statements that they were commercial suits although commercial suits were at that time given preference. As it could not be judged from the written statements whether they were commercial suits they were put down as long causes and so there was delay in their disposal.

Q. A great many of them were suits on accepted bills or bills of exchange. Can you tell us whether they were brought under Order 37 or not?

A. If they were brought under Order 37, there would be no delay at all.

Q. Could they not come under Order 37?

A. No.

Q. Was Order 37 widened?

A. Yes.

Mr. Gupte.—In the beginning of this year, I suppose.

A. A little earlier.

Chairman.—At this time Order 37 was only confined to Negotiable Instruments.

A. Yes.

Q. As regards commercial cases they were so many I understand that they made a rule that unless a suit is brought within a month one cannot get it into the commercial side.

A. The rule is six months now.

Q. I am speaking of then. The limit was one month.

A. Yes.

Mr. Gupte.—Instructions were given, I think, by the Chief Justice.

A. Yes.

Chairman.—I understand that since then and down till now the number of suits in the commercial list is absolutely trivial.

A. That took place after the armistice and I do not think it is correct to say that the advantage in priority in commercial suits was lost sight of at that time.

Q. I understand that there are few cases in the commercial list in these days?

A. Very few. I think a few cases every month are put upon on the Board.

Q. Why are they so few?

A. As a matter of fact claimants give time to the other party hoping to come to some amicable arrangement. They are rather reluctant to stretch their hands and to go into the courts and they often succeed in this manner.

Q. What I mean is this. Has at the present moment a commercial man in Bombay got a grievance or not as regards the commercial cases? Is it possible for a commercial man in Bombay to bring his suit to-day and get it disposed of within a couple of months?

A. I think there should be no grievance of any kind at all to these people. There is absolutely no congestion of commercial cases in these days and I don't think they are feeling any difficulty in getting their commercial cases disposed of.

Q. Provided they bring their cases within three months.

A. Yes.

Q. Would you have any objection if that rule is abolished altogether?

A. I think it should not be abolished at all. I would like to say that some limit should be kept in these cases. It may be extended but I think it should not be abolished altogether.

Q. Now as regards Order 37 would you be in favour of the suggestion of abolishing it?

A. No.

Q. You think that there ought not to be that restriction?

A. There ought to be some restriction. I think it would be wise to lengthen the period but I do not think it advisable to abolish it altogether.

Mr. Justice Stuart.—*Q.* How far would you be inclined to lengthen the time?

A. One year.

Chairman.—*Q.* Have you any great difficulty in insolvency?

A. The things are very much easier for the insolvents than for the creditors. They have to prove the facts to bring the insolvent into the criminal law.

Q. Cannot the creditors form a committee and help the official assignee and take some interest in the matter or do you think that they give up every hope as soon as an insolvency order is made?

A. Some creditors do take interest and take part in the public examination but there is not much tendency on their part to give help to the official assignee.

Q. Do you think that the official assignee succeeds in getting the schedules filed? How long does it take?

A. Sometimes 6 or 9 months.

Q. Is it not much?

A. A rough statement is taken before the schedule is filed. As regards the schedule they say that the books are not ready and it is difficult to make a statement without them.

Q. The result is that the public examination would not be held till after the schedule is filed and we find public examination coming off nine months after the insolvency.

A. Yes.

Q. In the meantime nobody knows what the man is doing with his estate.

A. It is difficult to realize without a schedule.

Dr. DeSouza.—I just want to ask you a few questions. With regard to second appeals, I think you said, in the course of your replies to the Chairman, that one reason why respondents are unnecessarily troubled on second appeals is that sometimes appeals are too freely admitted and that Order XLI, Rule 11, is not rigidly enforced as it might be. I will give you a few figures, perhaps in illustration of your remarks. I have made out statistics for the year 1922 and they show that in Bengal out of every hundred second appeals that were filed, 43 were rejected under Order XLI, Rule 11, in Bihar and Orissa, out of every hundred 30 were rejected, and in Madras 19, Burma 39, Oudh 16, Punjab 61, Central Provinces 20, Bombay 41, were rejected out of every hundred. I have not been able to compare figures for several years in the same court, but with regard to Bombay, I think, you will agree with me that about five years ago—as the present Chief Justice told us—the average number of dismissals was 20 to 25 for every hundred, and to-day the average is from 40 to 50 for every hundred. That gives emphasis to your remark that sufficient scrutiny was not exercised in Bombay in admitting second appeals, and it also gives point to the remark made by Sir Norman Cranstoun Macleod, in his statement which he has kindly submitted to us, that before he became Chief Justice, the practice for the judges was to straightaway admit an appeal, whenever an ingenious pleader made out any point of law in the case, although the decision of the first appellate court may have been quite correct. Do you not think that, having regard to the statistics of the various provinces that I have presented to you, that

which is laid down in section 100 is not obeyed by the judges when they admit an appeal, and that they do not satisfy themselves that the decree of the first appellate court was contrary to law or contrary to the usage having the force of law or that it was erroneous or unjust?

A. I think a closer regard with the provision of section 100, when admitting second appeals, might result in fewer admissions.

Q. And how will you enforce it?

A. Order XLI, Rule 11, applies in terms to first appeals.

Q. Yes.

A. Make a separate enactment in behalf of second appeals, encouraging the provisions of section 100.

Q. Would you approve of a proviso being added in the following terms: "Provided that when an appeal is filed against an appellate decree, the High Court after sending for the record, if it thinks fit to do so, and after fixing a date for hearing the appellant or his pleader, and hearing him accordingly if he appears on that date, shall dismiss the appeal without sending notice to the court from whose decree the appeal is preferred, and without serving notice on the respondent or his pleader, unless it sees reasons to think that the decree is contrary to the law or some usage having the force of law or it is otherwise erroneous or unjust."

A. I will accept that.

Q. If you accept that, do you think that there will be a closer scrutiny?

A. Probably it may lead to a closer scrutiny, as to whether lower court's decision is contrary to law.

Q. It would ensure what the law lays down, that the judge must satisfy himself that the decree of the first appellate court is contrary to law.

A. I think it would be a very satisfactory way of solving this problem.

Q. Now with regard to respondent's costs, I will give you figures as to successful second appeals. I am speaking only of the year 1922 for I have been able to get figures for that year only. In the province of Bengal out of hundred second appeals filed, the High Court interfered with the decree of the court of first appeal, either by reversing or modifying it, in only 13, in Bihar and Orissa 23, Madras 19, Bombay 14, Sind 28, Agra 17, Oudh 23, Punjab 14, Burma 31, Central Provinces 24. That points to the fact that on an average 80 respondents out of every 100 were completely successful and only 20 respondents out of hundred may be said to have some justification in coming up to the High Court for the third trial. That being so I think you quite agree with me that it is necessary in some way to safeguard the interests of the respondent, by way of guaranteeing cost. I have suggested two provisos for that—"Provided secondly that when the appellate decree is a decree confirming the decree in the original suit, the appellant shall deposit with his memorandum of appeal the cost of his appeal in the High Court as well as the cost of first appeal together with a sum to be determined according to a scale to be prescribed by the High Court in this behalf to meet the respondent's actual out of pocket expenses." As you know the respondent never gets the full cost. He only gets the taxed cost which is very very small. What is your opinion about that suggestion?

A. I will not accept the whole of it if I may say so.

Q. How much will you accept?

A. Perhaps to the extent of the cost up to the second appeal, because recently the scale of fee has been increased in Bombay Presidency and I think that would be quite a sufficient check.

Q. We have worked out and seen that out of a 100 cases in which notice is issued to the respondent, in 70 per cent. of the cases the decree was affirmed entirely. So, those 70 men should be reimbursed their actual costs Don't you think so?

A. They do not all come up.

Q. But, very often they do come.

A. Those are only chances.

Q. Is it rather unfair? After all I would very honestly have confidence in the High Court. Why should I pay? The respondent's confidence is being misplaced, if he loses in the appeal.

A. Yes.

Q. If the appellant wins the appeal, it is all right. If he loses, that money should be handed over to the respondent. It will be a check on frivolous appeals.

A. In the Privy Council appeals what will be the cost of a party for a pleader and a counsel?

Q. The Privy Council treat the respondent a great deal better than in our courts.

A. Is it necessary for the party to appear there?

Chairman.—Now, I may take it that the fees of the leading counsel in our courts are miserably inadequate. The fee paid to a senior is a great deal more—3, 4 and 6 times as much as the Code could allow.

A. Yes.

Dr. DeSouza.—The next proviso is that where the appellate decree is a decree confirming the decree of the original court no order for the stay of execution shall be granted unless first, in the case of a decree for payment of money or orders in execution of a decree for payment of money the appellant pays into court the whole decretal amount. Would you be in favour of that?

A. I would be in favour of that provision.

Q. Secondly, in the case of decrees for recovery of possession of immovable property, execution shall not be stayed except for reasons to be recorded in writing by the court in which case the appellant shall furnish security for mesne profits. Do you agree to that?

A. Yes.

Q. Thirdly, in the case of other decrees the appellant do furnish security for the due performance of such decree or order as may eventually be binding upon him.

A. Yes. It will do nothing to slacken the control of the High Court.

Q. Will you kindly explain to the Committee the system peculiar to this province, *viz.*, the valuation of a suit for purposes of court-fees and for purposes of pleader's fees? That is a system which has recently been introduced.

A. For purposes of jurisdiction you have a certain artificial value under the Court Fees Act. Take, for instance, the case for possession of a piece of land. Take the assessment and multiply it 5 times. That figure gives you the value for purposes of jurisdiction. You have also again to value it otherwise for pleader's fees. That is the market value.

Q. What is the system for pleaders' fees?

A. For the purposes of pleader's fee, you will give the market value, that may be contested by the other side and then the right market value has to be ascertained, and that determines the pleaders' fees.

Q. In easement suits how would you fix the pleader's fees?

A. Just as the plaintiff would choose. We will leave it to the mercy of the plaintiff.

Q. And if the other party disputes it?

A. He has no material to bring in.

Q. If eventually a proposal is made that there shall be no second appeal in suits which are under Rs. 1,000, I think it will be easy to find out the market value because even the parties will take care and that will be a reliable guide in fixing the real and not merely the notional value of the land?

A. Yes.

Q. There is one more important point. About suits of the value of Rs. 5,000 and under which are filed on the Original Side of the High Court, of what nature are they?

A. Contracts mostly.

Q. What sort of contracts?

A. For sale and delivery of goods and sometimes they are small partnership suits also.

Q. Do they, in any way, in their nature differ from suits filed in the court of the subordinate judges? Is there any reason why these suits should not be disposed of by subordinate judges?

A. Personally I do not see why they should not be tried by subordinate judges.

Q. Is there any reason why an officer of the standing of first class subordinate judge, an officer directly recruited from the bar, should not try suits of the value of Rs. 5,000 and under as a separate court? There will be saving of costs and time?

A. As a matter of fact it is being done in Ahmedabad.

Q. Why should not a similar court be established in Bombay?

A. When I send you a copy of the representation, you will find our minority minute. I did not agree with my Association, but personally I am in favour of it.

Mr. Gupte.—*Q.* Do you think that it will be less expensive? In my opinion it will not be. In the High Court you will have to pay less court-fee and less pleader's fee, but in the city civil court as suggested by Dr. DeSouza, the fee will be 7 per cent. and it will come to much.

A. According to the scheme of Dr. DeSouza there will not be dual system.

Dr. DeSouza.—Have you got any suggestion about new trials in the small cause court?

A. No.

Written Statement of the Bombay Vakils' Association.

Congestion of work.

1. (C) The time reasonably required for the disposal of cases in the Presidency Small Cause Court should be two months.

2. At present suits between one thousand and two thousand in this court are unduly delayed. The main cause of this delay is the fact that they are generally triable by the chief judge alone, although for sometime past on account of congestion and the appointment of an additional judge they are distributed amongst the other judges. It is necessary, that at least two judges should ordinarily hear suits between rupees one thousand and two thousand, and exercise what is called " the extended jurisdiction."

3. We would suggest the appointment of proper judicial officers preferably the best available men from those who have already sufficient practice at the Bar.

4. We would suggest that the judges of the different Presidency Small Cause Courts be transferred from one presidency to another.

8. We do not think that the concentration of civil courts in one place leads to delay. There should be no waiting for the legal practitioners and no encouragement should be given to this practice of waiting. Constant holding of briefs, if it is for a consideration, should not be allowed.

Increase of Jurisdiction.

9—15. We are of opinion that the increase in the jurisdiction of the Presidency Small Cause Court will lead to more speedy and less costly justice. A copy of the representation of this Association with regard to the proposed Government Bill is annexed herewith. We are of opinion that this legislation should be proceeded with, without any delay. This court should have jurisdiction to try suits relating to small partnerships, mortgages and other suits which are excluded from the jurisdiction of the Presidency Small Cause Court by section 19 of the Act. It is desirable that all suits below Rs. 5,000 and which are not of any special jurisdiction, should not be tried by a costly and dilatory process, in the High Court.

23. The right of applying for revision to the High Court under section 115 is a valuable right. It has often prevented gross miscarriage of justice in cases in which particularly no appeal lies. The narrow interpretation put upon the section should be removed and all mistakes of law be made grounds for moving in the High Court.

24. To make justice more speedy and economical we would suggest that all cases in which no appearance or defences are filed should be put before one special bench and disposed of there or by the registrar. In every case which is contested and in which an appearance is filed, defences to the suit in the nature of a written statement should be called forth one day before the hearing.

Service of summonses.

25. The Presidency Small Cause Court issues, in our opinion, a far larger number of processes than any other court in the presidency. Frequent annoyance is caused to parties in the service of processes. The present working of the bailiff department leaves much to be desired. My Association is strongly of opinion that service by registered post and by clerks of legal practitioners sworn as special bailiffs be largely availed of. Some safeguards might be adopted to the effect that such service should be valid only when the service is properly effected or when there is a proper acknowledgment for the same.

28. The use of the post office for service of notices and summonses is most desirable in a large commercial city like Bombay, and we strongly recommend its introduction for Bombay city.

29. A rule requiring parties to give a registered address is desirable and service at that place should be deemed good.

30. According to the present practice the bailiff insists upon the party or his agent accompanying him and his signature is always taken, as of the person identifying the party.

36. It would be desirable in *ex parte* proceedings that affidavits should be a primary mode of proof.

37. It is not at all desirable for courts to have discretion to fix a time limit for the examination and cross-examination of witnesses. Judges are human and they often lose patience and in such cases such discretion would cause considerable harm.

43. Judgments are seldom unduly long in many cases. Our complaint is that often in cases raising several important issues, no judgment is given in the small cause courts. It should be laid down that in all cases over Rs. 500 where specific issues of law and facts are raised, the court should give separate findings on the several issues.

44. Points of law going to the root of the claim or defence are seldom disposed of before taking evidence.

45. Dates for original hearing are fixed by the registrar. The adjourned dates of cases are fixed by the judicial clerks.

49. Part-heard cases are not heard from day to day. Often they are adjourned at the interval of several days. This is not at all desirable. The general practice should be that part-heard cases should go on from day to day and continuously, and should only be adjourned for exceptional causes. When they are not so heard and adjourned to a different date the judges should be directed to make a note of the reasons for so doing.

51. It is desirable, in a large commercial centre like Bombay, that due facilities should be given to merchants for the speedy disposal of their suits. We would suggest the introduction of third party procedure for commercial suits in the small cause court. Often the same contract passes through several parties. Instead of having several distinct suits by several parties, facility should be given to the first party to litigate his contentions with the last party, thereby saving considerable amount of costs.

56. A decree-holder is always eager to realise the fruits of his decree. It should be left to him to recover his amount any time within 12 years. A limitation to this rule should be to the effect that in case of *ex parte* decrees where there is substituted service of summons the execution should be limited to three years. In several cases in our courts decrees are made payable in 10 or 15 years. To such cases the rule should not be applicable.

58. It is not desirable in Bombay to limit payment to the modes suggested, *viz.*, by post, or to a vakil or before a sub-registrar.

Insolvency.

69. The present law as to insolvency in Bombay is very unsatisfactory. Often by resorting to that course, a dishonest debtor evades the payment of his just dues. He files a petition and for 18 months execution is stayed, and thereafter the petition is not prosecuted or is dismissed but the debtor has gained his object. Investigation of insolvency cases by the High Court (which requires the costly system of attorney and counsel), often favours the dishonest debtor to the detriment of the honest merchant. All insolvency matters wherein the assets are not worth Rs. 1,000 should be transferred to the small cause court for speedy disposal. No second petition for the same debt should be allowed except with the permission of the court. The time during which proceedings are stayed in insolvency should be excluded in counting the period of limitation. Suits which are filed in ignorance of insolvency proceedings (and they are many) should not be dismissed, but stayed pending disposal of the petition.

77. It was at one time suggested in Bombay that all partnerships with a capital of over Rs. 100 be made compulsorily registerable, but it was found impracticable.

80. In case of persons who can not sign, the system of taking thumb marks is largely in use in Bombay.

Heavy cost of Litigation.

82. The court-fees are already too high and they should not be enhanced.

In order to bring down the cost of litigation we think that some strict rules should be framed to limit the exhorbitant fees charged. Advocates and pleaders whose right to appear and plead rests on the sanad should not be allowed to charge whatever fees they like. It should be made illegal or unprofessional for a legal practitioner to charge fees for a case he has not conducted. The maximum fee chargeable by legal practitioners should be fixed at a reasonable figure. The evil of costly litigation is due to the fact that a certain number of legal practitioners at the top of the profession are claiming exhorbitant fees, on the principle that they could charge such fees as they like. Fees should be so arranged that they would not be oppressive. Some such drastic measures are necessary to bring down the cost of litigation.

Mr. S. B. DADIBURJOR, Representative of the Bombay Vakils' Association, called and examined on Tuesday, the 26th August 1924.

Chairman.—I gather from your statement that members of your Association are generally interested in the Bombay small cause court.

A. Yes, in all courts except in the original side of the High Court.

Q. I take it that a certain number of Advocates practise on the Appellate Side so that a great bulk of your members work in the small cause court.

A. A majority of them.

Q. That being so let us go first of all to the existing work of the small cause court. As regards building I understand that the building is rather a good one.

A. Yes.

Q. As regards the organisation of it what will you suggest?

A. Unfortunately this question was not submitted by me to the members of the Association and what I am giving here are therefore my personal opinions. In my personal opinion it is not properly situated so that a great deal of inconvenience is caused to ordinary people to go for example, to the cash department which is situated on the fourth floor, and hundreds of people have to go there.

Q. That is as regards the organisation of the building?

A. Yes.

Q. Is there anything else that seems to be wrong in other respects, apart from the cash department?

A. The cash and the execution departments are both located on the fourth floor. The bailiff department was also located on the fourth floor but this difficulty has now been remedied. We represented and they have now brought it down.

Q. Now as regards the organisation of the work, when summonses are issued, I take it that the thing comes before the registrar?

A. No.

Q. What happens?

A. All the suits that are put down for hearing are divided into five lots and those above one thousand are placed before the Chief Judge, except on Tuesdays and Saturdays. Tuesday is reserved for appeals under section 38. The rest of the bundle is divided among four or five judges.

Q. When a case comes on, the summons is always summons for disposal?

A. Yes, summons is for final disposal.

Q. If a summons is not for disposal, then what happens? Is it not put before the judge at all?

A. It is.

Q. If a summons is not served the case comes before the judge all the same?

A. Yes.

Q. And then the plaintiff or somebody is to be there?

A. The plaintiff or his pleader generally applies to the judicial clerk for adjournment.

Q. Then that work is done by the clerk and not by the judge?

A. Ordinarily till four or six months' time judges have more or less delegated their work to the judicial clerk and he gives time.

Q. Each judge has a judicial clerk?

A. Yes.

Q. In what way a certain number of cases get away out of the day's list?

A. Yes.

Q. Then what happens about the other cases, are they called on in their order?

A. Numerical order is seldom observed. Each judge's clerk arranges the work himself and it is arranged in a very haphazard way. First of all suits in which there is no appearance for the defendant or for the plaintiff are put down. They are often without pleaders. Then come those in which there is no appearance for the defendant. Both of them are classed *ex parte*. After that there are miscellaneous notices and then notices in which execution proceedings are involved. After that such suits as are on promissory notes, etc., are put up, and then come the other suits of more or less contested nature, for example suits for damages, and they are arranged according to the nature of work.

Q. How many cases are generally put down before a particular judge on a given date?

A. On an average fifty to sixty.

Q. And these fifty to sixty cases are entered in a list?

A. In a cause list.

Q. Printed cause list?

A. There are two lists prepared, one for the judicial clerk in which the names of the parties and other details are given, and the other list, which is for the public, gives only the number of suits.

Q. How are these fifty to sixty cases that come before a single judge classified in the public notice?

A. They are in numerical order there.

Q. The man who is going to be a witness in the case, which is put down at the end of the day, does not know when his case is likely to be taken up?

A. There is a bailiff at what is called "enquiry office," who only tells the man that he is to go to such and such court and nothing else.

Q. As to the other, the list of the judicial clerk, is that classified in advance according to the order in which things are going to be taken up?

A. The list is a bare list and with the list comes the proceedings, which the judicial clerk generally examines by going through the cause of action, and he generally arranges.

Q. Does he generally arrange according to what is in his own mind or is there any way in which a person can find out the order?

A. None whatever except by looking at the bundle as to how they stand. But latterly some of the judges have adopted this system, namely to arrange after *ex parte* work has been disposed of.

Q. These summonses are summonses for final disposal. Can one tell before seeing whether the defendant will put in appearance or not, or whether the case is going to be *ex parte*?

A. Absolutely not.

Q. How does the judicial clerk know?

A. Those which are generally to be defended and where pleaders are engaged, are the cases in which the pleader informs the judicial clerk that the defendant is going to put in appearance.

Q. Is it a common experience in these courts for a party to bring his witnesses and then to go back because the case is not reached?

A. That is common with regard to the extended jurisdiction.

Q. Not with regard to others?

A. Generally not with regard to others. The work was congested but now they are having an additional judge.

Q. You do not consider that, apart from the extended jurisdiction, it is fairly congested?

A. Considering that we are having an additional judge. But supposing you keep the present permanent number, namely five judges, then it will be congested.

Q. How many have you got at present?

A. Five.

Q. How many do you require?

A. Six.

Q. Sometimes you had six judges?

A. More or less during the last 4 or 5 years there have been 6 judges off and on.

Q. When do you get the additional judge? Do they wait until the file is badly congested or watch it carefully and get additional judges appointed then and there?

A. I think the Chief Judge makes a report to the Government that the arrears are heavy and he gets an additional judge.

Q. As regards execution, I understand that the small cause court judge makes instalment orders at any time. I take it that a great many people ask for instalment orders and get them. Is there any complaint that they are given too carelessly—that is to say, you can have them for the mere asking without the court really going into the bottom of the thing.

A. No.

Q. Is there no complaint about that?

A. No. The commercial courts are very reluctant to grant instalments. They are confined only to cases where usurious interest is charged or the man is unable to pay at once.

Q. What about rent suits?

A. They are generally made payable by monthly instalments. Supposing a man has to pay Rs. 300 as arrears of rent and a suit is filed against him, if the rent has been in arrears on account of circumstances beyond his control, he would be allowed to pay it by monthly instalments, because he has to pay the current rent monthly.

Q. What I want to know is whether, when a person applies for execution, it is not the practice for him to come with an application to revise the instalment order?

A. Not at that time.

Q. You don't think that judges stay execution and proceed to enquire for a couple of months whether the instalment order should be revised?

A. If a man committed default in payment, he must make an application at once and it is made payable ordinarily within a week.

Q. Can he always make default in the payment of every instalment and come every time with an application asking for revision of the instalment order?

A. It is only delayed by 4 or 5 days. Sometimes when he is unable to pay, he has to make the application. This relief is more in the nature of an insolvent's relief. He says he has no property and you can go against any property that he has. It is only under these circumstances that he is given any relief.

Q. When a court makes an instalment order, I think it prevents the plaintiff, even if he finds property, from executing for any more.

A. There is a special section under our Act which gives the court power to make instalment orders or to reduce the instalments.

Q. What I want to get at is whether when a court makes an order for instalment, it sticks to its order?

A. Generally it does.

Q. What I want to know is whether creditors are as a matter of fact getting fair treatment under the instalment system?

A. I think so; because even if full execution is allowed, they often lose the whole amount.

Q. Then, apart from extended jurisdiction, does a judge in general get through the day's work or has he to adjourn cases?

A. He has to adjourn almost half his bundle.

Q. If he adjourns half his bundle, then practically the witnesses will have to come over and over again.

A. Generally he disposes of cases at the first hearing or the next. The disposal is more or less confined to 2 or 3 months in suits under Rs. 1,000. It may be that there is delay in certain cases.

Q. You say that sometimes he has to postpone half his bundle. Are those adjourned cases given precedence on the adjourned date?

A. They are given precedence of some sort, but not complete precedence. They are generally taken as part of the adjourned date's work.

Q. Take the case of a man suing for Rs. 500 damages on account of breach of contract. That suit is adjourned. The next day on which it appears, it takes its turn in the order of the work for the day and it is quite likely to be adjourned again.

A. Yes. But when other suits of a similar nature are disposed of, he may get a chance.

Q. You have here an Attorneys' Association who say that it is a real grievance and that cases are not being reached at all.

A. Attorneys are more or less engaged on the extended jurisdiction cases and the bulk of the commercial cases are between Rs. 1,000 and 2,000, and there the congestion is real.

Q. I am not talking about extended jurisdiction. I am talking about the ordinary jurisdiction. You tell me that in the ordinary jurisdiction you have not got this trouble of the witnesses being brought several times, but I find that, when these cases are adjourned, they are given no sort of precedence.

A. They are given precedence over the cases of their own sort, but not precedence over every other case.

Q. Now you think that in cases below Rs. 1,000 witnesses don't have to come to court more than once or twice.

A. Yes.

Q. Now, as regards the extended jurisdiction, first of all there is a right of transfer to the High Court under section 36 of the Act.

A. Yes.

Q. I see your High Court has made a rule saying that when an order is made, he should deposit Rs. 400. Does that rule work well?

A. The question of transfer is more or less negligible. Out of 2,500 cases, hardly 30 suits are transferred. They are only transferred by way of harassment rather than anything else.

Q. I rather understand that instead of exercising a discretion to make the man give security for the costs, there is a sort of rule requiring him to deposit Rs. 400. You say that at any rate it does not result in too much hardship.

A. Whenever a case is transferred, certainly it is a harassment either to the plaintiff or to the defendant and a man generally succeeds in it if he has got a long purse. But in many cases as soon as they are transferred, they are settled, the parties being unable to pay the costs.

Q. Do you get many applications in revision under section 115?

A. Several.

Q. How many in a year?

A. I think about 200. I am not quite sure of figures.

Q. I see the total number of applications in revision of all sorts is only about 300?

A. It may be so, because I am not sure of figures.

Q. In this presidency such applications go to the petition bench on the Appellate Side?

A. Yes. There is one difficulty here. Formerly references used to go on the Appellate Side, but last year the Chief Justice made another rule allowing pleaders to appear as a result of a representation made by the bar association. There was an ordinary case relating to wages of about Rs. 300. The question was whether he was entitled to this provident fund or not. The lower court gave a decree, in revision the judges differed and the matter was sent to the High Court. The man was unable to defend himself and what is most surprising is that Rs. 700 were taxed against him as costs.

Q. The old practice was to send them to the appellate side?

A. It has never been the practice here. They are always sent to the Appellate Side of the original side. There counsel and attorneys are only allowed, but recently pleaders have also been allowed to appear.

Q. These references are not, I think, very many, in the course of a year?

A. Hardly three or four. The High Court snubs the lower court so often that they do not send any references.

Q. Have the judges sufficient practice in stating cases?

A. Whenever a judge finds a difficult point to decide, he states the case and it is taken up as it is.

Q. What I mean to say is this. To state a case is a definite sort of thing. Unless the man knows how to state a case, he cannot do it.

A. A judicial officer drawing about Rs. 1,500 ought to be credited with ability to do that.

Q. Yes, he ought to be credited, but what I am asking for information is whether this practice of reference is working satisfactorily. One condition of its working satisfactorily is that the man should know how to state a case. I want to know whether the High Court is in any way dissatisfied with the way in which cases are stated?

A. For the last ten years the High Court has no reason to be dissatisfied.

Q. Do you find that, apart from difference of opinion, the Presidency Court has the power to state a case on a point of law?

A. Yes, under section 69. I will tell you the history of section 69. It has passed through various stages. Originally section 69 was enacted for the purpose of giving the parties a right to go to the High Court whenever any question arose, that is to say, the plaintiff or the defendant had the right to ask the judge to state the case whether he wished or not. That right was taken away in 1905 and subsequently the judge was given the right to state a case when he felt any doubt. Since then references have considerably dwindled and as far as references are concerned the judges are exceedingly chary of making any references because they think that they are capable of deciding cases themselves.

Q. You suppose that in the course of a year there are only two or three references or something like that?

A. I have not got the exact figures at my command, but I think half a dozen is the maximum.

Q. Now let us come to the next point—new trial applications, *i.e.*, section 38. When a case is tried by a judge, does it go on a new trial application before the Chief Judge and the same judge?

A. It used to be only three years ago.

Q. Have you changed the system now?

A. Yes. Now the Chief Judge has got the power of putting these applications before any bench either consisting of himself or of any judges.

Q. Is it working better than before?

A. Far better. Under the present system judges are more or less inclined to agree with the findings of other judges. But I am of opinion that this system is better than the old one and it is working fairly satisfactorily.

Dr. DeSouza.—Q. How many motions for new trial do you have in the day?

A. About 50 or 60.

Q. But that is a very large number?

A. That includes cases that have already been adjourned, but I will not be able to give you a correct figure.

Q. How many of these are generally successful?

A. Hardly five per cent.

Q. I suppose they take considerable time to argue before the judge?

A. Sometimes they do and sometimes they do not.

Q. Out of the 50 fixed how many will be heard?

A. Almost all of them. Sometimes it so happens that one case blocks the whole board and that is not unusual—that happens pretty often—otherwise the board is so arranged that the whole lot is heard except 10 or 12. I would suggest that a High Court Judge should come there and sit under section 38. He would be coming as an independent man and will be able to dispose of these matters easily.

Q. Would you be in favour of deleting section 38 altogether and giving power to the High Court under section 25?

A. Not in any circumstances.

Q. You think this provision is absolutely necessary?

A. Yes.

Q. Why do you want to retain this provision in the face of so much discontent?

A. Because section 25 of the Provincial Small Cause Court Act is only confined to law and not to fact. Under section 38 you have very wide discretion.

Q. I think you are not right there, because section 25 also gives power on fact as on law?

A. But the judges do not exercise it.

Chairman.—Q. I understand in Bombay there is no doubt that under section 38 you can bring an application for a new trial before the Full Bench and you are entitled to ask the court to review the decision on facts as well as on law. In fact section 38 is treated as a full right of appeal.

A. Yes.

Mr. Justice Stuart.—Q. Are you in favour of extending the jurisdiction of a small cause court still further?

A. Yes.

Chairman.—Q. As regards the present jurisdiction your complaint is that you should have at least two more judges?

A. Yes, on account of recent rise the suits which were ordinarily of the value of Rs. 1,000 only have now become of Rs. 2,000.

Q. The existing jurisdiction is between Rs. 1,000 and 2,000.

A. Yes.

Q. Can you tell me roughly how many suits were filed in a year?

A. I can give you the exact figures. In 1923 they were 2,393 over Rs. 1,000.

Q. Were these disposals or institutions?

A. Considerable arrears.

Q. What is included in that figure. Institutions or disposals or something else?

A. Institutions, *i.e.*, suits which were filed.

Q. They are considerably in arrears?

A. Yes.

Q. At present is there only one additional judge?

A. After the appointment of an additional judge in last October we had another judge this May.

Q. Let us come to the question of increase in the jurisdiction. It is more or less a debated subject and has been so for years. I want just to find out from you what the present position of the matter is. As I understand it, first of all your Association is in favour of an extension of the jurisdiction of the small cause courts up to Rs. 5,000.

A. With a right of appeal.

Q. You want to give this jurisdiction to small cause courts in all suits of whatever character they may be?

A. Yes.

Q. As against that some people are apparently in favour of establishing a new court altogether with the name of City Civil Court, as in Madras. Who are supporters of this scheme? Whose scheme is this?

A. The City Civil Court is more or less favoured by those people—I mean attorneys as well as pleaders who are practising on the Appellate Side of the High Court. They consider that the judges of the small cause courts being more or less in the habit of exercising summary jurisdiction would be unfit to exercise the jurisdiction in which the appellate powers exist.

Q. There is another school apparently who think that the Original Side would do the work provided the dual system is abolished? Is there any difference from your point of view between the two schemes. Is there any substantial difference?

A. The substantial difference is that there should not be any multiplication in the number of the courts. I think this jurisdiction should be exercised in the one and the same court.

Q. The one question is that of extra expense for the establishment of this court but is there any difference from the practitioner's point of view or from the litigant's point of view?

A. If there be two separate courts both the practitioners and the litigants have to go to two places and I think therefore that it would be advisable to have one court where both these jurisdictions should be exercised.

Q. You think that each court should not have a little bar of his own?

A. Yes.

Q. You think it is bad?

A. Not bad, but it is not desirable.

Q. Are the judges of the small cause court all paid the same?

A. I think a recent revision in their salaries has been made by which the Chief Judge is given Rs. 2,000 and the others are getting Rs. 1,000 to Rs. 1,500 by time-scale rising by Rs. 50 a year.

Q. Do you not think that an extension in the jurisdiction like that would involve some rise in their salaries?

A. If you give them jurisdiction up to Rs. 5,000 I think that 2,000 should be given to them.

Q. Would you recommend that a certain judge should be given the extended jurisdiction, or that it should be given to the whole court subject to the distributary right of the Chief Justice?

A. I think that it should be given to the whole court subject to the distributary right of the Chief Justice. Some stigma attaches to a judge if he is given a lower jurisdiction.

Q. You think that for two thousand you can get judges who will be sufficiently good lawyers of sufficient standing, and sufficient character?

A. Two thousand rising to three thousand.

Q. If all the judges including the judge of the small cause court and the extra judge were to get that, it will mean a considerable expenditure.

A. But the small cause court is bringing in lakhs to Government.

Q. That may be a very good reason but there will be considerable expenditure?

A. It would not be for people pay for it and why should not they have it. It will be an increase but it will not be an increase considering the fact that they pay.

Q. As regards the court-fee, at present in the small cause court, the ordinary Court Fees Act applies?

A. No, it does not.

Q. You have got special rates?

A. We have got powers under section 71, in which actual fees are fixed.

Q. Can you make any comparison between them and the fees given in the ordinary Court Fees Act?

A. For two thousand it is 146.

Q. How does that compare with the ordinary court-fee?

A. It is more or less the same, but with the increase in the jurisdiction the scale goes down. The man, however, feels that for a suit of five thousand rupees he should not be compelled to pay three hundred or four hundred rupees.

Q. I see you discuss this question of fees. Apparently the proposal of Government is to enhance the court-fee?

A. They enhanced it, but again they decreased it except in the small cause court. The legislature did not sanction the increase and they have gone down since April 1st.

Q. In this proposed bill for enlarging the jurisdiction of the small cause court, I gather from your representation that Government wants to increase the rate of fee chargeable at present in the small cause court?

A. They charge one anna in a rupee from one thousand to two thousands, and they want to continue the same fee up to five thousands, and we say that it is not desirable.

Q. You want the principle of the Court Fees Act being applied?

A. Yes.

Q. You say that the cost on the Original Side is heavy. Do you not think that the court-fee to be paid at the beginning in other courts will be heavy? Take a case of four thousand rupees. What court-fee would you pay?

A. The attorney's fee would be much heavier than even the court-fee.

Mr. Gupte.—*Q.* In all cases?

A. In the majority of cases.

Q. The majority of short cases are *ex parte* and in a short case, which is uncontested, the attorney's bill comes to three hundred rupees, and these three hundred rupees include out of pocket expenses and expenses which come to Government?

A. I do not know the scale of Government fee that prevails on the Original Side, but certainly in an *ex parte* matter the proportion of the court-fee and the attorney's fee would be one to four.

Q. The counsel gets a certain proportion which is very insignificant as compared with the whole bill. Take an ordinary class of litigation. Out of hundred short causes seventy are disposed of *ex parte*. If you have to pay an *ad valorem* fee for four thousand rupees, it will come to Rs. 250. but if you have to pay the court-fee according to you, you will have to pay three hundred rupees and in addition there will be process fee, and it will be much more expensive to the litigant than the decree of the High Court.

A. If you ask any merchant in Bombay he will explain to you better than I can do. I can certainly say from my experience that this case is entirely hypothetical.

Q. If you come to the High Court you will know it.

A. I have been to the High Court, but if you look at the taxed bill, it will not be so.

Chairman.—*Q.* Well, now you have given us a criticism which you sent to the Government of their draft bill to amend the Presidency Small Cause Courts Act, and there are two matters in connection with this proposal which are of some importance. You suggest that insolvency jurisdiction, where a suit is under one thousand rupees, should be dealt with in the small cause court. I do not quite follow as to how one can tell what the estate is going to be, when he files an insolvency petition. In many of these cases the man has got assets which are concealed. Apart from the debtors' petitions there are creditors' petitions and the man cannot tell whether his debtor has got one thousand rupees or not.

A. These cases that you suggest, namely the debtor concealing the property, are very few. In the majority of these insolvency cases, if you look at the schedule, you will find that assets are more or less one anna or two annas in a rupee at the utmost, and the whole of the assets with the official assignee hardly come to one thousand or two thousand rupees. In the majority of cases we find that the assets are hardly worth anything at all, and in these cases to leave the jurisdiction with the insolvency court tends to great hardship.

Q. And then, in the insolvency court, only advocates are heard.

A. Yes.

Q. Then, what do you suggest as regards arbitration proceedings?

A. I would suggest that the whole of schedule II may be made applicable to the small cause court. If a man says that a certain matter may be referred to arbitration and he does not do it, there is no remedy. The word 'court' in the Arbitration Act means the High Court. In Bombay, if a man refuses to go to arbitration, then we have to make a motion in the High Court. In cases where there is already a reference and an award is given, there is nothing to compel the man to file the award. All this difficulty arises with regard to petty traders.

Q. If any case could be dealt with by a small cause court assuming that the parties went to court, you don't see any reason why the small cause court should not in such cases exercise all the powers of any other court.

A. Yes.

Q. I take it that a great many of the arbitrations in Bombay are under the Indian Arbitration Act. Have you any difficulties in respect of that matter? I am not talking of the Second schedule. I am talking of arbitrations under the Indian Arbitration Act.

A. I don't quite understand. Generally the mercantile community have clauses in the contracts to refer to arbitration. If you mean that, they have got considerable difficulty in enforcing that.

Q. What is the difficulty?

A. They have to go to the High Court and it is very expensive. For instance, a man contracts to purchase goods worth Rs. 150. The goods arrive in Bombay. He refuses to take delivery. When there is a clause in the contract that the dispute should be referred to arbitration and when very respectable persons are appointed, he refuses, and there is nothing to compel the man to refer to arbitration, and there is nothing to compel him to pay the amount of the award, if any, passed.

Q. If he does not take care to take part in it, you may proceed *ex parte* against him.

A. Where?

Q. Before the Chamber of Commerce arbitration tribunal. When you have got your award, all you have got to do is to file it in court and enforce it.

A. Immediately you go to file the award, you have the chance of meeting with opposition on the slightest pretext and there is a chance of its being contested. The merchants do not want to take that risk.

Q. The High Court, before it stays execution, has got the power to insist upon terms.

A. I will give one concrete instance. Suppose there is a case of damages for Rs. 500. If he files the suit in the small cause court and gets a decree, his costs would be about Rs. 100. Supposing the same contest goes on in the High Court the costs would be very much and if there was some fault in the procedure followed by the arbitrators, he is likely to lose his case, and he does not want to take the risk.

Q. You think that in cases for small amounts under the small cause court jurisdiction, they might have jurisdiction with regard to arbitration.

A. Yes.

Q. That is to say, you mean that if you get an award for Rs. 500 you must be able to file it in a small cause court and execute it as a small cause court decree.

A. Yes.

Q. You have to go further, because it would be open to the party to file a suit to set aside the award.

A. That is what is actually done now.

Q. In those cases would you compel the parties to come to the court in which the award is filed and have the matter dealt with there?

A. I would compel him to file the award and proceed with it.

Q. I am talking of a man filing a suit to set aside the award.

A. He must contest the award when it is filed. All the objections might be raised at that time. That would be the best procedure to adopt.

Q. Has your association ever had occasion to consider the matter of arbitration systematically?

A. Only on one occasion it had to consider, as regards the power of the High Court to stay. It worked considerable hardship. The power to stay always remained with the High Court. On that we made a representation to the Government that the power of stay must be with the court where the suit is filed. Subsequently, after the amended schedule, the courts are recently able to stay proceedings.

Q. The small cause court has now got power to stay proceedings under section 19 of the Act.

A. Yes, also under paragraph 18 of the II schedule of the Civil Procedure Code. The powers under paragraphs 17 and 19 are not yet made applicable.

Q. Then with regard to insolvency work, you say nothing is done if the defendant does not want to pay. He simply files his written petition and slips away.

A. It is true that nothing is done at all. This evil is exceedingly rampant here. If a man gets a decree and the defendant does not want to pay, he spends about Rs. 20 and gets a petition written and files it at once. He does absolutely nothing for 18 months and slips away. If the petition is dismissed the next day he files another and goes on doing like this unless the thing is barred. This was not so when the old statute was applicable.

Q. Have you ever thought of any amendment of the law as regards arrest and imprisonment of persons for small debts? I do not know whether the insolvency law is working better in towns or in the mofussil?

A. I think a person's imprisonment for small debts is almost negligible in Bombay because the courts are very reluctant to commit.

Q. I think persons are not imprisoned because the creditor does not want to pay the subsistence money?

A. It never happens that a person is released for want of payment of subsistence money.

Q. But sometimes creditors do not want to pay?

A. Yes, sometimes it so happens, but sometimes they do pay. When a dishonest defendant is avoiding the payment of the money, the creditor applies for a warrant of arrest and the man is arrested.

Q. Do you get many cases of prosecution for insolvency offences under the Act?

A. The Insolvency Law, as it stands at present, puts very great strain upon the creditor. He stands the chance of paying very heavy costs.

Q. Do you think that it will be better if the High Court Insolvency Judge, instead of acting as insolvency judge, should also act as a magistrate doing warrant cases? Do you think it will be better to work it on the lines of English system, *i.e.*, he should order prosecution of the man and employ the ordinary machinery of the police?

A. I am not in favour of that. The mercantile community will not like it, because the police does not inspire any confidence in the public.

Q. But at the same time do you ever find the High Court Insolvency Judge exercising the criminal jurisdiction under the Act?

A. The difficulty is that they have not got the materials and therefore they do not; the reason is not that they do not want to.

Q. I think the reason is that they do not want to occupy the time of the court?

A. They have no reason to say that because the work is there and they have to do it.

Q. But more important work has to be attended to first and then the less important work?

A. That is a false pretext.

Mr. Gupte.—Perhaps you have no experience of the insolvency work in the High Court.

A. No.

Q. There are cases in which such proceedings are taken up.

A. The only difficulty is that the Judges have got no material for them.

Chairman.—*Q.* Why should not the police deal with these cases?

A. The objection is that the investigation will be in the hands of the police inspector which the mercantile community does not like. I think both the plaintiff and the defendant would object to their being harassed by the police.

Q. As a matter of fact the official assignee does not know much of prosecutions and so does not do that work.

A. The official assignee is expected to know this—in fact he knows all about this but he does not do that work.

Q. Can you tell me when there was a case of a person being criminally prosecuted and sent to jail under the provisions of the Presidency Towns Insolvency Act?

A. I have not heard of any such case.

Q. I have been talking about that and perhaps we have been talking of cross subjects. I mean, if a man commits a bankruptcy offence such as concealing effects or falsifying his accounts and a notice is sent to him and he is called before the High Court Judge who conducts the enquiry and tries the man himself, as though he were a magistrate doing warrant cases, frames a charge and convicts him, do you think it will work fairly satisfactorily? In this case the Judge would be doing work as a magistrate and the prosecutor would either be the official assignee or the individual creditor or some other

public spirited person? What I was suggesting was that if people have to be prosecuted in the course of bankruptcy they should be dealt with by criminal courts just as other criminal offences are dealt with by them? Would you have any objection to that?

A. There would be no objection, but I would like the official assignee to conduct the proceedings because he is in charge of the estate.

Q. Supposing you had an arrangement like that, do you think that it would be better if the starter of the proceedings, be he the official assignee or the creditor, obtains an order or, say, sanction from the judge?

A. The difficulty would be that he shall have to see that there is no harassment and for that purpose considerable evidence will have to be led before him and *primâ facie* materials are wanting.

Q. The official assignee would lay the materials before him.

A. Yes.

Written statement of the Pleaders' Association, Western India, Bombay.

1. The period reasonably required, having regard to the habits and customs of the people of the Bombay Presidency, for the disposal of the following classes of civil proceedings is as follows:—

High Court (Appellate Side).

First appeals, 1½ year.

Second appeals, 1 year.

Miscellaneous appeals, 6 months.

2. The period actually taken in disposing of the above proceedings does not exceed the reasonable limit in *many cases*. The limit is exceeded in some cases on account of various circumstances, *e.g.*, return of notices unserved, death of a party, translation of documents, question of court-fees, etc.

On the Appellate Side of the Bombay High Court second appeals are now disposed of ordinarily within 12 months.

The administration report of civil justice for 1922, page 5, shows that out of the total 804 first appeals and 1,136 second appeals (including the balance of 1921), 585 first appeals and 524 second appeals were pending at the end of the year 1922, and that 219 first appeals and 612 second appeals were decided in the year. The disposal of first and second appeals shows a decrease of 240 and 300 respectively from those of the preceding year. The percentage of disposal of first appeals and second appeals was 27 and 54 respectively.

3. With regard to the district and subordinate courts we are of opinion that the general remedies for shortening the period during which civil proceedings are now pending are (1) proper selection of judicial officers, (2) insistence on 5 hours' work, (3) strict supervision over the actual working of the subordinate courts by the district judges and of the work of district judges by the High Court, (4) determining the efficiency of judicial officers by the quantity and quality of their work and not alone by the number of cases disposed of.

4. Yes.

The Association has expressed its opinion on this question in its answers to the questions issued by the Public Services Commission in 1913 and 1923 (copies of which are annexed herewith—not printed—as Appendices A and B). Please see answers 11, 51 and 52 in Appendix A and Nos. 1, 2, 4, 7 of Appendix B.

The present method of recruitment of subordinate judges and district judges is not satisfactory. We think that the subordinate judiciary should be recruited to a larger extent than at present from practising pleaders of more than 3 years' standing and for this purpose the age-limit should be

raised from 30 to 35. District judges should also be recruited from the practising lawyers. Recent experience in this connection has proved very satisfactory.

The system of transferring civilians from the revenue line or the Secretariat to hold posts of assistant judges, joint judges and additional sessions judges is not at all satisfactory. Civilians who are to be posted to the judicial branch should receive sufficient training in the principles and practice of law before they are entrusted with original or appellate work.

5. There are no district munsifs in the Bombay Presidency. There are 2 grades of subordinate judges, *viz.*, second and first class.

No special training is necessary for them, except that after the first appointment of qualified persons as second class subordinate judges, they should be made to work for some period (3 or 6 months) as attachés to subordinate judges, first class, or district or joint judges.

6. Yes. The frequent transfers of judicial officers (assistant judges and subordinate judges) from one district to another does impede the disposal of work. They are not inclined to take up heavy cases after they learn about their transfer.

7. It is not possible to prescribe a standard of efficiency in the abstract as regards the work done. But, we are of opinion that quality and quantity of the work done should be taken into consideration in determining the efficiency of a judicial officer, and mere despatch or number of disposals should not be given weight to. With a view to show a large number of disposals, suits are dismissed on various grounds and they are restored to file subsequently.

If a sub-judge is engaged in hearing a suit for some days that should be taken into consideration, when the monthly return is examined.

8. We do not think that the concentration of civil courts in one place causes any appreciable delay. Usually senior pleaders make arrangements for their cases in other courts if they happen to be engaged in one court. The advantages of having civil courts in one place, *e.g.*, Thana, Ahmedabad, Surat, is that litigants can get the services of experienced pleaders.

9. No.

10 and 11. There are no district munsifs in this presidency.

12. The district judge does send judicial original and appellate work to assistant judges and joint judges. He also sends appellate work to subordinate judges, first class, with appellate powers. The district judge may be relieved of some miscellaneous administrative work, *e.g.*, administration of minors' estates, appointment and transfer of the subordinate establishment of subordinate courts. This work may be transferred to an assistant or joint judge. Applications for Probate, Letters of Administration, Succession Certificate, cases under the Guardians and Wards Act, Land Acquisition proceedings may be and are in practice sent to assistant judges. These matters may be transferred to first class subordinate judges as well. The district judge should take up important civil appeals and sessions work. He should do the supervision work of subordinate courts in the district. If district judges do work regularly from 11—30 to 5—30, as High Court judges do, they would be able to dispose of more work.

13. Yes, on subordinate judges of the first class.

14. There are no village panchayats in the Bombay Presidency.

15. The Association would give the Presidency Small Cause Court at Bombay jurisdiction up to Rs. 5,000.

In section 19, clauses (*e*), (*f*) and (*o*) should be omitted.

For clause (*g*) the following should be substituted:—

> Suits for the determination of any right to or interest in immovable property other than suits for the recovery, partition, or foreclosure or redemption of a mortgage of immovable property or for sale of mortgaged immovable property.

We are not in favour of extending the jurisdiction of the Provincial Small Cause Courts. On this point please see the bill to amend the Presidency Small Cause Courts Act, in its application to the Presidency of Bombay. The Association has expressed its opinion in its reply to the Government of Bombay on the bill.

16. (*a*) Yes.

17. No.

18. No.

19. (*a*) No curtailment of the right of appeal under the Letters Patent from the judgment of a single Judge is necessary.

(*b*) The number of Letters Patent appeals on the Appellate Side in the Bombay High Court is small. No useful purpose will be served by curtailing the right. The administration report on civil justice for 1922, page 5, shows that the number of appeals under the Letters Patent on the Appellate Side of the Bombay High Court filed during the year 1922 was 36, and 38 were pending at the commencement of the year. 53 were decided during the year and 11 were pending at the end of the year. In 4 the decrees were modified, in 4 they were reversed, 27 were decided *ex parte* and decrees were confirmed, 17 were decided after contest and decrees were confirmed, 1 was withdrawn.

The statement given at page 6 shows that the number of appeals under the Letters Patent instituted in 1919, 1920 and 1921, was 96, 111 and 75.

20. Hardly any frivolous second appeals is filed in the Bombay High Court. The Association is strongly against the curtailment of the right of second appeal in the way suggested as regards the value of the property.

In suits relating to land, easements, injunction, declaration, etc., the amount of the claim may be small but there may be important and substantial questions of law or title. It is undesirable to take away the right of the public to resort to the highest court in the country.

21. No. The compulsory deposit of the decretal amount in full in every case before a party is allowed to file a second appeal will involve great hardship.

22. The power given under Order 41, rule 11, is duly and systematically exercised.

23. No.

The Association is not in favour of the suggestion that in cases of revision under the Provincial Small Cause Courts Act, the decretal amount should be deposited before a revision application is allowed to be filed. In some cases the plaintiff whose claim is partially or wholly rejected applies in revision to the High Court.

The High Court as a matter of practice and following the case law in interpreting section 115 of the Civil Procedure Code rarely entertains an application against an interlocutory order.

The total number of applications under the extraordinary jurisdiction under section 115, Civil Procedure Code, and under section 25 of the Provincial Small Cause Courts Act in 1919, 1920, 1921 and 1922 was 290, 337, 312 and 419. (*Vide* statement at p. 6 of the Administration Report of Civil Justice for 1922.)

25. A remedy for securing the service of summons is to send the notice by registered post as well. The procedure under section 106, Transfer of Property Act, is desirable. In cities, where there is the district court, clerks of pleaders may be authorised as bailiffs for the purpose of serving summonses, like Solicitors' clerks in Bombay. In villages and taluka towns, village officers such as patels and Talatis may be authorised for the purpose.

27. No.

28. Yes. But in both cases thumb impression of the party to be served shall be taken.

29. Registration of addresses and service thereat are not practicable in all cases. Option may be given to parties to have registered address. A rule requiring parties to give registered addresses is not advisable.

30. Process-servers are in touch with the party and his pleader. He generally insists on the party to send his man for identification, except where he happens to know personally the man who is to be served with a summons or notice. The suggestion that a process-server should report himself to the pleader of the party may be given effect to.

31. The remedy for the better framing of issues is that they should be framed by the judge in the presence of the pleaders of both parties after discussion. The judge may ask the pleaders to put down in writing the issues and then the judge should decide what issues to raise. If the judge disallows any particular issue, he should state in writing his reasons for disallowing it.

Many judges raise issues in the presence of pleaders. Some judges raise issues themselves without consulting the pleaders and send the issue paper to the office. Pleaders come to know of the issues at a late stage. This practice should be put a stop to.

Appellate judges should raise the issues and points for determination in the presence of pleaders before the commencement of the arguments and should not postpone the fixing of those points till writing judgment.

32. The provisions of Orders XI and XII of the Civil Procedure Code as regards discovery, inspection and admission of documents are not much availed of in the Bombay Presidency. The neglect may be due to want of proper instructions and the system of payment of professional fees in lump by percentage and not on the amount of work done as in the case of solicitors.

Now a days in heavy suits pleaders do require the other side to admit certain documents.

Some subordinate judges do examine the parties in order to get admission or denial of facts or to narrow down the points in dispute. It is not an invariable practice. A rule may be made on the point in the Civil Circulars.

33. The examination of the plaintiff and the defendant as part of the trial at the beginning of it, before any witnesses are examined, is undesirable and will not tend to minimise the calling of witnesses. On the contrary it will lead to the evil that parties will know the case of the other side and will call witnesses to fill in the gaps left in their evidence.

The Association does not accept the suggestion that steps should be allowed to be taken for summoning witnesses, only after the parties are examined.

34. The provision in Order 16, rule 16, is strictly observed. Parties and pleaders generally take care that takid is given to the witnesses, who have been served and have appeared, in order to secure their attendance and to save expense for fresh summons.

35. Much unnecessary evidence is not let in. Judges can check the calling of a large number of witnesses to prove the same thing. The trial judge may feel satisfied with the evidence of one witness on a point. The appeal court may think that the evidence is not sufficient. In order to safeguard this contingency, as many witnesses as can be had are produced to prove one thing. No hard and fast rule can be laid down.

36. Affidavits should be and are considered the primary mode of proof in the proceedings mentioned in the question. A court ought not to prevent a party from calling the person making an affidavit for cross-examination, if the statements made therein are regarded as false. The sanctity of an oath is not felt so much when making an affidavit as when one has to give evidence and face cross-examination.

The suggestion that no oral evidence should be allowed to be given except with the special leave of the court and on pre-payment of costs should not be accepted.

37. The Association is strongly against the suggestion that courts should have a discretion to fix a time-limit for the examination and cross-examination of witnesses. The suggestion is novel and impracticable. A time-limit is not put anywhere. You cannot and ought not to prevent the right of cross-examination to be curtailed by any artificial rules.

38. Order 37, Civil Procedure Code, need not be extended to other kinds of suits.

39. The principle of representative suits might be made applicable to the cases of a Mitakshara family and of co-owners. Consent of the other members or co-owners should be obtained in writing before such a suit is allowed to be brought or proceeded with. Those who do not give consent might be allowed to appear separately. If the court thinks that separate appearance was not necessary, it might disallow or award costs as circumstances might require.

The principle of representative suits might be insisted upon in a creditor's suit against an insolvent.

40. If a legal representative was aware of the proceedings, it seems reasonable to throw the duty on him to come forward and request the court to add him as a party. But it is not possible to enforce the obligation, which depends upon proof of knowledge of the proceeding, which is difficult to determine. As the period of limitation is curtailed to 90 days, it is not desirable to make any change on the subject. No objection need therefore be thrown on a legal representative to come forward and apply to be made a party.

41. Much delay is not caused by the difficulty of appointing a proper guardian *ad litem* for minors.

The suggestion that the plaintiff should name all the possible guardians in one petition and notice should be ordered to go to them all simultaneously may result in causing delay instead of expediting the proceedings.

42. The practice of granting *ex parte* injunctions and orders is not taken undue advantage of.

43. Judgments of the courts are not unduly long in any appreciable number of cases.

44. No. Points of law going to the root of the claim or defence are not usually disposed of before taking evidence.

45. Dates for original and adjourned hearing are usually fixed by the court clerk in consultation with the judge. The date for adjourned hearing is ordinarily fixed by the judge in the presence of the pleaders, having regard to the number of cases for that day and the convenience of the pleaders.

46. It is not generally possible to fix beforehand the time required for the examination of witnesses and hence consultation with the pleaders will be hardly of any avail.

47. No. Trials are not unduly delayed by the examination of witnesses on commission. Commissions for examination of witnesses are not common in the Bombay Presidency.

48. Yes. Insistence on written applications for adjournment will be of effect in speeding up work. Insistence on an affidavit in every application for adjournment will cause hardship.

There is no rule about day costs in the mofussil courts. Judges should have discretionary power to award costs of the day and to fix the amount thereof.

There is a rule about day costs on the Appellate Side of the Bombay High Court when an appeal has to be postponed for want of necessary translations.

49. Suits are tried continuously from day to day but not for *full time* because the judge has also to attend to miscellaneous and urgent work.

50. The High Court does exercise supervision, but the Association is not in a position to express an opinion whether the supervision by the High Court over district judges is sufficient to ensure proper inspection by them of the mofussil courts.

51. There are not many commercial suits in the mofussil of the Bombay Presidency, except in certain trade centres such as Ahmedabad, Sholapur, Dhulia, Hubli, Broach, Surat and Poona.

The rules for commercial causes in force on the Original Side of the Bombay High Court might be made applicable with necessary changes to such cases in the mofussil.

55. The language of section 47 should not be modified as suggested.

56. The period of 12 years fixed under section 48 for execution of money decrees should be retained. The period under Article 182 of the Limitation Act, should not be curtailed to one year. The starting point may be altered from the date of the last application to the date of the last order on the last application.

The suggestion that it shall not be necessary for a decree-holder to apply every three years and that he shall be allowed to execute the decree any time he finds it convenient to do so within 12 years may be given effect to. A decree-holder wants his money as early as possible. It is not likely that he will sleep over his rights. He tries to proceed against the property of the debtor. Warrants for personal arrest are not resorted to largely, as will be seen on an examination of the statements in the Administration Report of Civil Justice for 1922, page 52, Statement No. 11, columns 10 and 11 and for previous years.

—	Column 10. Imprisonment.	Column 11. Arrest and release without imprisonment.
Paid Sub-Divisional Tribunals . . .	99	327
Small Cause Courts	51	173
District Courts	13	6

The large number of infructuous applications for execution can be explained on the ground that under the present law decree-holders have to put in fresh applications for execution with full knowledge that they will not be able to realize the decretal amount as there is no available property belonging to the judgment-debtor against which they can proceed, simply to keep the decree alive. If the law were altered and decree-holders were relieved from the necessity of taking proceedings as steps in aid of execution within three years, there would be very few infructuous applications for execution.

Statement 11 of the report for 1922 shows that the total number of applications for execution in the mofussil courts (excluding the small cause courts and district courts) was 153,186. Full satisfaction of the decree was obtained in 27,564 and partial satisfaction in 29,141 and the number of wholly infructuous applications was 48,407. The number of applications pending at the end of the year was 48,029. The total number of totally infructuous applications for execution in all courts including small cause court and district court was 52,222.

Columns 12, 14 and 21 show that the number of applications in which movable property was sold was 633, the number in which immovable property was sold was 2,231, and the number in which execution was otherwise effected was 34,466.

The statement shows that decree-holders proceed against the person and movable property in a small number of cases. They proceed against immovable property as far as possible and try to recover in cash by any other means.

58. The suggested alterations in Order 21, rules 1 and 2, should not be made.

72. The rule about attesting witnesses should not be changed.

73. It is desirable to allow parties to give secondary evidence in any form, with proper safeguards. Much time is taken up in insisting on certified copies.

74. The Law of Limitation may be altered in the following cases:—

In suits by and against the Government the period may be curtailed to 30 years. In suits by local bodies the period may be reduced to 12 years as before.

76. Yes.

77. Registered document of partnership need not be insisted on in the case of partnerships started with a capital of Rs. 100 and upwards.

78. The doctrine of part-performance does negative the provisions of the Transfer of Property Act, as to creation of title in immovable property. You cannot ignore the principle and effect should be given to it by making the necessary amendments in the Transfer of Property Act and Registration Act.

79. Yes. The suggestion that the discharge of obligations created by registered document should be valid only if there is a registered document with a uniform fee of one rupee may be accepted.

80. Insistence of compulsory registration of all documents in the case of persons who cannot sign their names would cause great hardship. The rule would prevent illiterate persons from borrowing or dealing with property.

81. You cannot do away with the rule of *Benami*. The abolition of the rule will not assist in the realisation of the fruits of a decree speedily.

82. The court-fees are sufficiently high. There are very few frivolous suits in this Presidency. Enhancement of court-fees is not desirable.

83. It is not necessary to retain the provision as to attestation in the case of mortgage deeds. There is no justification for making any difference between them and sale deeds and lease deeds of equal value.

84. The evils of champerty and maintenance do not exist to any appreciable extent in this Presidency. The law as laid down by decisions of the Privy Council is clear. In the case of poor litigants help is necessary to enforce legal rights—otherwise their rights would remain unenforced.

85. Yes. Suits for accounts, partition, determination of boundaries of estates, and suits in relation to disputes as to trade customs, may be referred to a referee.

86. The multiplication of law reports has not interfered with speedy justice. In many cases the judges find at hand the decision of a court and decide accordingly. If the point was not covered by any authority of the High Court of the province, and was a new one, the judge would have taken time to arrive at a decision. In a way the Law Reports expedite the course of administration of justice.

The number of Law Reports may be minimised by enforcement of section 3 of Act XVIII of 1875 that only authorised Law Reports should be cited in courts and should be referred to in judgments. Unauthorised Reports are not available everywhere. When reference is made in the judgments of subordinate courts to such reports, it is sometimes impossible to get the reference and to test its accuracy. Private reports may be used by the courts of the province in which they are published as the judgments of the High Court of the province are binding on them.

87. In India the adjective law is already wholly codified. Substantive law is largely codified. Codification of the personal laws of Hindus, Mahomedans, Buddhists, may be desirable. But the subject is difficult and it is not possible and desirable to have a code for the whole of India, as there are different systems of personal laws in the various provinces. The evils of codification are that it makes the law rigid and inelastic except by legislation. Growth of custom is checked and slow and steady development of law by the tacit recognition of new ideas by the people does not take place.

Mr. P. B. SHINGNE, Representative of Pleaders' Association, Western India, Bombay, called and examined on Wednesday, the 27th August 1924.

Chairman.—You are a representative of Pleaders' Association, Western India?

Mr. Shingne.—*A.* Yes.

Q. That is an association which covers, I take it, the whole of the province?

A. Yes.

Q. And therefore most of your members are interested in the mofussil and in appeals from there?

A. Yes.

Q. You have given us a particularly useful memorandum, if I may say so, putting in certain statistics, in a most convenient place. We are very much obliged to you for that and now I would like to go to one or two important topics.

I see you say that the period taken in disposing of appeals does not exceed the reasonable limit in many cases, but is it not the case that in an ordinary way, at present, first appeals take a great deal more than eighteen months to come on?

A. Some of them.

Q. We usually gather that a first appeal would not be heard for a great deal more than eighteen months?

A. First appeals which come after short notice are disposed of earlier.

Q. What are short notice appeals?

A. Execution matters under section 47 of the Civil Procedure Code.

Q. Taking the case of an appeal from an ordinary suit, does it not take something like three years in the High Court?

A. No, it does not take three years unless you have a number of parties, or there is a bulky record to be translated, or the pleader is absent. Otherwise many of them become ready in the course of a year, and if they cannot be reached earlier it is largely because the Bench is over-worked.

Q. I follow that. I do not want the present position to be in any way represented as better than what it is. I want to know the real facts as to the extent of the delay?

A. In those cases in which there is one respondent, for instance, or two, and not many, they are decided within 18 months. But if there are many respondents and translation has to be gone through, or one of the respondents dies, then it takes more time. Now a number of appeals of 1923 are ready since many months.

Q. How long does it take, not to be ready but to be disposed of?

A. I cannot exactly give you the percentage, but some of them are decided before 16 or 18 months, and some take two years.

Dr. DeSouza.—Several of the 1921 appeals are now being heard.

A. Some of them, but not several.

Chairman.—*Q.* Do you think that they are ordinarily disposed of now within a year?

A. Some of them are and many of them become ready within a year. May I just make a suggestion in this connection, if you permit me. It should be recommended that there should be two Benches on the Appellate Side, one dealing exclusively with short notice matters and second appeals, so that that Bench may take special care of them. At present the situation is this. While preparing the board, the first appeals are on the top and that delays the disposal of second appeals.

Dr. DeSouza.—*Q.* What second appeals have not been disposed of?

A. Some of 1922, and they are putting some of 1923 also on the board.

Chairman.—Now you say that the disposal of first and second appeals in the year 1922 was 420 and 300 respectively less than in 1921. I take it that there have not been always two benches to decide these appeals?

A. In 1922 we had only one bench usually.

Q. I see you say that the percentage of disposal of first and second appeals was 27 and 54 respectively. Percentage of what to what?

A. My secretary tells me that he took those that were filed in the year as a standard and drew up the percentage.

Q. That is to say about four times as many first appeals were filed in 1922 as were decided in 1922, and about twice as many second appeals?

A. Yes.

Q. Then I see you say that in order to recruit more of the subordinate judiciary from practising lawyers, the age-limit should be raised from 30 to 35. I take it that if you raise the age-limit, you will have to increase the salary or do something as regards the pension?

A. The rules will have to be altered.

Q. It will be a matter of some expenditure?

A. The period of service may be shortened. Instead of thirty years it may be twenty-five.

Q. Do you think that the public as represented in the Legislative Council will be disposed to allow the additional expenditure?

A. It is difficult to say.

Q. Does the practice obtain in this province still, to any extent, of decreeing or dismissing suits *ex parte* with the intention of restoring them to the file?

A. That is what I understand. I know nothing about it personally.

Q. That evil is still there?

A. Yes.

Q. Now can you tell us the facts as regards the delegation of work of district judges, and you think that at present the district judge ought to be able to dispose of more work than he really does, and that there is no object in further burdening the file of the first class subordinate judge, for the benefit of the district judge.

A. A first class subordinate judge is already an over-worked officer.

Q. Does the practice of putting all cases in which the Secretary of State is a party, before the district judge, overload the district judges in some parts of this province?

A. I think such suits are not many.

Dr. DeSouza.—*Q.* I think there are some courts where there are a large number of such suits—Ahmedabad for instance.

A. Not a very large number.

Q. When I took over charge in 1921 there were as many as 289 suits, one of which was 10 years old and they could not be tried.

A. Perhaps that may be the result of accumulation of arrears.

Q. The average institution, I might tell you, is 50 or 60 suits.

A. May I enquire if that is a big institution? That will be peculiar only to Ahmedabad. Next to Bombay, it is an important place, in which the rights between the people and the Government have got to be decided for one reason or another.

Chairman.—Q. I think there are some places in which this practice of giving those suits to the district judge is overloading him. Have you not noticed it yourself?

A. So far as Ahmedabad is concerned, there may be accumulation. But I am not prepared to say that in other places the accumulation was the result of the other work which he had to do or the result of any other cause. So far as some of those districts with which I am familiar, are concerned, I do not suppose it hampers the work of the district judges so palpably as to make it necessary to give him relief.

Q. What do you think of the principle of putting such a suit before the district judge? It seems to be peculiar to this province alone. In all other provinces the Secretary of State is treated like anybody else. It goes before a munsif. Do you think there would be some inconvenience if such work is not reserved for the district judge?

A. Such suits may be transferred to the 1st class subordinate judges. It won't be so good from the standpoint of the litigant as also from the standpoint of the Crown to delegate such things to second class subordinate judges.

Q. The point is you don't want it to be tried by a 2nd class subordinate judge.

A. Yes.

Q. So long as it is not tried by a second class subordinate judge, then it is a question as to which officer can most conveniently deal with it.

A. It may be transferred to the additional district judge, if he is qualified to try it.

Dr. DeSouza.—Q. Under the Civil Courts Act he cannot do so and you would be in favour of the law being amended to that extent.

A. Yes. But, some suits are of such a nature that they cannot be tried by the 2nd class subordinate judges.

Q. May I inform you that out of the 289 suits which had accumulated in Ahmedabad, about 180 were with regard to ottas 5 ft. by 7 ft. which had been ordered to be demolished by the municipal secretary and the Secretary of State was made a party to such suits. Is there anything extraordinary in these suits which a 2nd class subordinate judge cannot try?

A. We are taking an unusual example of Ahmedabad, where these cases are rampant. We do not find such suits pending in any other district court for a long time.

Q. In other parts it will be a small plot of waste land 10 yards by 5 yards which somebody had encroached upon; and that has to come before the district judge and wait for trial from 2 years to 3 years. If it had been instituted in a 2nd class subordinate judge's court, it would have been disposed of in 6 months.

A. There is a question of right between the man and the Crown. They may involve some peculiar questions in respect of the Municipal Act and the powers of Government in connection with such things and there would be questions which would rather be too difficult to be handled by a junior 2nd class subordinate judge.

Mr. Justice Stuart.—Q. I don't understand what you mean. Do you distrust the competency of the courts or their honesty?

A. I think it much better to have such suits tried by experienced judges.

Q. I fail to see why the Crown should be put in a better position than an ordinary litigant. This is the only province in India where this is done.

A. It is after all a question of opinion ultimately.

Chairman.—*Q.* The idea on the back may be that the party litigating with the Crown would think that it would be better to have it tried by a fairly senior judge instead of by a young man more or less of the status of a junior subordinate judge.

A. That is one aspect. So far as the interest of the Crown is concerned, it should be considered by a more experienced officer.

Dr. DeSouza.—*Q.* Do you think that when the Collector is one of the parties you will not expect the same independence of judgment from a 2nd class subordinate judge as you would get from the district judge.

A. Probably that idea also weighs with some. It does not weigh with me.

Q. You think the 2nd class subordinate judges will not always exercise independence of judgment?

A. I myself do not think so, speaking for myself. So far as people's opinion goes, they would like very much to have such suits handled by superior officers.

Q. In connection with that matter till very recent years, suits against the Collector as representing the Court of Wards, were, under the Civil Courts Act, to be tried by the district judge. Now they have gone over to the subordinate judges. Similar suits against Talukdari Settlement officers also were tried by district judges.

A. They still have to be tried by them.

Q. That again is a very serious anomaly. When I took over charge in Ahmedabad there were 20 old suits against the Talukdari Settlement officer. Simply because he was the Talukdari officer managing an estate those suits came to me.

A. That is probably due to the language of the statute. I believe there was some amendment of the Civil Courts Act.

Q. That was vetoed by the Council. I quite agree that in very important cases against the Secretary of State where perhaps public feeling is strong, like the suit against the Ahmedabad Municipality, which I tried, it should be left to the discretion of the district court or the High Court to transfer them to the file of the district judge, if it is thought fit to do so. That can always be done at any time. Ordinary suits of this kind which burden the file of the district judges should be filed in the subordinate judge's court. That they should be filed in the district court seems to be anomalous and unnecessary.

A. Of course this is a matter in which my Association is not so very keen that the district judges ought to be burdened with these suits. I am only talking of the people's view on the matter. I personally don't mind if the 2nd class subordinate judges are invested with jurisdiction on some of these cases, a due standard being laid down as to what sort of cases may be transferred to him, and the power being vested in the district judge to make the selection.

Chairman.—*Q.* The next question is the question of the small cause court. First of all, as to the Presidency small cause court, you suggest that under section 19 certain clauses should be omitted in order that suits for recovery, partition or foreclosure or redemption of mortgages or for sale might be entrusted to the small cause court in Bombay up to Rs. 5,000?

A. Yes.

Q. Do you think there are any other matters which can be put within its jurisdiction?

A. I do not think there are any others.

Q. As regards the present practice in the Presidency small cause court, have you any particular improvement or change to suggest either in the practice of the court or in the law?

A. No.

Q. As regards applications for new trial to two judges of the small cause court, is that working all right?

A. Yes, it is, and, if I am not mistaken, there is no right of appeal to the High Court.

Q. No, only revision under section 115 of the Code. Is that working all right?

A. Yes.

Q. Can you tell me whether in this town section 38 is understood to give a full and unfettered right of appeal?

A. Yes.

Q. If a man wants an appeal on facts is his appeal dealt with under section 38 exactly in the same way as the first appeal is heard in the High Court?

A. I am told they do not go into details and disturb the appreciation of evidence.

Q. But do you think the present practice is working satisfactorily?

A. Yes.

Q. I think the provincial small cause court is competent to grant attachment before judgment of immovable property. I do not think that question has arisen here. But do you think that such power may be given?

A. My Association has not considered that point, but, so far as my personal view goes, if that power is given to first class subordinate judges with certain limitations, it may work well and be very useful. After all it is more or less a case in which opinion is likely to differ.

Q. So you are doubtful about that?

A. Yes.

Q. As regards the Provincial Small Cause Court Act, you know the exemptions in the second schedule. Do you know there are any exemptions which may be taken away?

A. I do not think.

Q. I understand in this presidency about four subordinate judges and about two special small cause courts have been entrusted with small cause court jurisdiction up to Rs. 1,000. Has that been working all right? Is there any objection to that?

A. No.

Q. There is no feeling that cases between Rs. 500 and Rs. 1,000 should always have a right of appeal?

A. I do not think there is any such feeling.

Q. It is the only presidency where the Local Government have availed themselves of that power under the Act; and no great damage has resulted as yet.

A. People have been accustomed to it in the course of time and whatever opposition there may have been at the time it was introduced it has subsided.

Dr. DeSouza.—*Q.* I think it was only a couple of years ago that these judges were invested with Rs. 1,000.

A. Yes.

Q. Have applications under section 25 of the Act increased in consequence?

A. I do not think.

Chairman.—*Q.* Let us now come to the next point of Letters Patent appeals from a single Judge on the Original Side, but I think that does not interest you so much?

A. No.

Q. Then let us take Letters Patent appeals from the point of view of second appeals? I gather from you that in 1919 there were 96 such appeals, in 1920, 111, in 1921, 75 and in 1922 only 36?

A. Yes.

Q. That drop is explained, as I understand, by the circumstance that most of the Letters Patent appeals here are from orders under Order 41, rule 11 made by a single Judge?

A. The bulk of them.

Q. And I understand that recently when there has been a question of any doubt as to that, the practice has been to refer it to a Bench?

A. At the time of admission under rule 11.

Q. Am I right in thinking that this is the reason why the figures are so low?

A. Very probably.

Q. In practice, I understand, here, with certain exceptions, speaking broadly, after a case is admitted under rule 11 it comes on for hearing before two Judges?

A. Yes.

Q. And the result is that Letters Patent appeals are now reduced to a minimum?

A. Yes. If a second appeal happens to be heard by a single Judge for some reason and if his lordship finds it rather difficult to decide the point, it is transferred.

Q. So far as this presidency is concerned, there is no cause for any change in the law as to that?

A. No.

Q. May I put it to you in a rather different way. Some High Courts try all second appeals by a single judge up to a certain limit, say Rs. 1,000 or Rs. 500; others make very little use of the single judge. Do you not think that when a man has had a trial, a first appeal, and is going up to the High Court for a third hearing, the principle ought to be that the High Court should make up its mind whether it requires a single judge or two judges and if it requires two judges, it should give two judges straightaway so that if a case is a proper case to be discussed under the Letters Patent, it is a proper case to be heard before two judges to begin with. But assuming that the state of business or the conditions are such that you can not do that—for instance you could not do that in Burma where all matters up to Rs. 3,000 come up before a single judge, or you could not possibly do it in Madras and in other places—then there will be a third hearing and a fourth hearing and perhaps the natural result will be a remand. If a case is really a proper case to be heard before two judges, it should be put down for hearing before two judges?

A. Yes.

Q. Apparently there are 111 people who had four hearings in great many cases. I do not mean that all these cases were of no importance. There were of course some important cases but the majority of them were about petty matters, etc.

A. Yes, it looks so.

Q. Have you or your Association ever considered the time that is taken in such cases. Taking the thing as a whole, *i.e.*, from the institution of a plaint—say about an easement or about a small piece of land—to the ultimate decision by the court on the Letters Patent appeal, would not that take a long time? I think that would take four, five or six years or more.

A. Yes, these matters generally take four years at least.

Q. So that if the plaintiff has a just grievance and he comes to court and so much time is taken to decide his petty complaint, would it not amount practically to a denial of justice to him? You see the matter to be decided is a very petty one, *i.e.*, opening of a door and some quarrel about a piece of land or something like that.

A. That is quite correct, but there is another aspect of the matter. We have to see what is the percentage of these Letters Patent appeals. The

average I think is very small, and also out of these 111 a large number would be dismissals summarily. So far we lawyers are concerned we also give our opinion frankly and say that a particular case is not a fit one to bother their Lordships with and sometimes, therefore, we do not even file an appeal.

Mr. Justice Stuart.—*Q.* How long does it take a litigant in a petty case to get a final decision from the date of the institution up to the date of decision of his second appeal in the High Court?

A. Three to five years, in my opinion.

Q. I cannot find anything less than five years—I have gone through fifty second appeals and have found that in none of those less than five years were taken.

A. Might be.

Q. Don't you think something must be done in this respect? I give you an example as to how the present system works.

Here is a case from Ahmedabad. This was a suit to obtain a declaration that a next door neighbour had not got a right of way in a narrow lane and also to close a drain. The valuation of this suit was Rs. 25 only. This was instituted on the 25th January 1917, and decided by the subordinate judge nearly two years afterwards on the 15th November 1918. The first appeal was decided on the 4th July 1921, and a second appeal was then filed in the High Court which was decided in the year 1923 and this suit thus lasted for 6½ years. That is typical.

A. I am sorry I am not acquainted with the details of this case and therefore can say nothing about it. If I can be given an interval of a month I can show a hundred cases in which things were done admirably rapidly.

Q. You see unfortunately I have not very much time at my disposal. We have to travel all over the country. It was not possible for me to go through more than fifty appeals in four days.

A. I quite appreciate that. I am only mentioning that taking hold of fifty cases will not be sufficient to come to any conclusion.

Q. Not an absolute conclusion but I suggest it is a reasonable conclusion if the cases are picked out at random by some body else, as these were.

Dr. DeSouza.—*Q.* It will be a very good thing if you can select some cases—I mean contested cases—and send them to us.

A. I can do this within a couple of months.

Mr. Justice Stuart.—I shall be delighted to see any other side and if you can send these figures to us I shall be glad to see them.

A. I shall do this.

Chairman.—*Q.* I understand that in this presidency the use of rule 11 of Order 41, is in force, but at the same time I gather that in this presidency sometimes the view is taken that if the appellant could show a point of law, whether it is a formidable point or not, it ought not to be shut out under rule 11, Order 41.

A. It is not like that. They want to see whether there is a substantially good point or not.

Q. Do you think that with some of the judges the practice is that unless you show that there is a *primâ facie* case for interference, *i.e.*, the judgment of the court below is wrong or at least really doubtful they throw it away?

A. Yes.

Q. The point should be that having regard to the fact that the case has already had two trials whether it is really necessary in the interests of justice to give the case a third trial and to put the respondent to a further trouble and expense.

A. That is the point in view no doubt and this ought to be the point in a judicial mind.

Dr. DeSouza.—*Q.* What is the law regulating the judicial mind, the law under section 100 of the Code?

A. There are so many opinions about that section that judges only can know well.

Q. Section 100 of the Code says that no appeal shall lie against an appellate decree unless the decree is contrary to law or contrary to any usage having the force of law, and it follows, therefore, that the judge before admitting the appeal should satisfy himself that the decree appealed against is contrary to law, and not that there is an arguable point of law?

A. The arguable point is one in respect of which the lower court has gone wrong. That is the standard in view.

Chairman.—*Q.* We ordinarily talk about a case being admitted under rule 11. That is what the law should be, but the position is that the right of appeal on any point of law is given by section 100, and under rule 11, the question really is not of admitting an appeal, but of whether you are entitled to summarily reject it. Now, do you think that, instead of giving a right of appeal on a point of law and an arrangement by which that can be summarily rejected, it would be objectionable to give a right of appeal, on points of law by special leave, to the High Court? That is to say, instead of coming before the High Court first under Order XLI, rule 11, saying "I have got a right of appeal and these are my points," the man should be asked to show some reasons for having a third hearing, that there is something wrong with the judgment or something difficult in the subject matter, and that it ought to be a right of appeal on points of law by leave as it is in England where, for instance, appeals from the County Court Judge to the King's Bench are allowed only if you get leave from the court below. If you like you may limit that to cases up to five hundred rupees and it would not be very different from our practice?

A. It will be the same as our present practice.

Q. Except that you would get rid of a certain mass of cases that get through under rule 11 and ultimately result in nothing.

A. It will substantially be the same as the present practice. At present the High Court Judge sees that it is a fit case.

Mr. Justice Stuart.—*Q.* You think that very few second appeals are admitted unless they are good appeals?

A. Good appeals are those which ultimately happen to be successful.

Q. Not invariably. But how do you explain that a very large percentage of second appeals, after they have been admitted under Order XLI, rule 11, fail.

A. It is because at the time of admission the record of the case is not ready as it is in first appeals.

Q. Is not this a very strong argument for seeing the record?

A. Certainly, but the litigant is not always ready with the necessary papers.

Q. What the High Court has got to do is to order the lower court to send the record. Do you not think that it will be much more satisfactory than bringing out a respondent from the other side of Bombay Presidency, keeping him waiting for two years and then finally dismissing the appeal?

A. The Civil Procedure Code will have to be altered.

Chairman.—*Q.* Order XLI, rule 11, of the Civil Procedure Code lays down that the record may be sent for. I quite concede, if I may say so, the right of the appellant to have the record there for the purpose of showing why his appeal should be admitted. The appellant has a right to require the record.

A. But in the High Court it is not generally done.

Q. Even if the record is not looked into by the High Court, the advantage of sending for it is that the appellant's vakil will be able to study the original records. His clients will only be able to give him scraps.

A. That is a work which may occupy a month or so.

Q. Of course. Now as regards revision, I see that in recent years the number of applications was, 290, 337, 312 and 490. I just want to make it quite clear. When an application is made in revision in Bombay, I take it that it is filed in the office. Now, do these figures include all the applications filed?

A. Yes.

Q. Can you give me an approximate idea as to in how many of these applications a rule *nisi* was issued?

A. I cannot give you figures at present, but if you like I will obtain them.

Q. I think we will get it direct. I would like you also to see the figures.

A. May I suggest one question, and that is to divide figures under two sections, how many from the presidency small cause court and how many rom the provincial small cause court.

Q. If we say that section 115 and section 25 should be kept separate that will be much better?

A. So far as section 115 goes, some of them will be from the mofussil.

Q. Section 115 from the mofussil and presidency small cause court, and then section 25?

A. There will be three varieties—one variety under section 25, and two under section 115, from Bombay and from the mofussil, and that will give us a clean and correct idea.

Q. I would like to see in how many of the applications the respondent is troubled, and how many of them result in nothing?

A. Rules are issued rather freely under section 25 than under section 115, and you will also find a comparatively larger percentage of the reversal under section 25.

Q. Of course section 25 is a safeguard, and the number of cases that were decided under that section seems to be enormous.

A. Yes.

Q. If the applications under section 25 were in any way unreasonable, one would like to curtail their number; but apparently that safeguard does not seem to work badly.

A. So far as our Presidency is concerned, the number of applications is very reasonable. So far as section 115 is concerned, we find that reversals in some cases conduce to justice.

Q. Now, section 115 gives rise to a good many cases in which there is a difference of opinion as to whether such things would come within the strict letter of the section. Taking interlocutory orders, what view do you have in Bombay? There are two views among the different High Courts. The Allahabad and the Punjab High Courts seem to hold the view that interlocutory orders are not within the scope of section 115.

A. That is largely our view.

Q. It seems a little absurd that there should be two views on the same section in different courts in India. What would you suggest to remedy the defect?

A. Probably an explanation might be added to section 115 that interlcoutory orders may or may not be interfered with.

Q. You don't think it is a very important matter.

A. No.

Q. In interlocutory matters I think records are not sent for as a matter of course.

A. Only recently they have made a rule. It is rather defective so far as appeals from orders of remand are concerned. They practically decide the case so far as the appellate court is concerned. The case is sent to the court below for retrial. Then the whole case is opened in the High Court. But in such cases records may be necessary.

Q. You think that in interlocutory matters records should not be sent for as a matter of course without special leave.

A. Yes.

Q. I take it that if any gentleman appearing for the appellant wants a record to be sent for, there would be little difficulty in getting it.

A. There would be no difficulty.

Q. Now, about the question of issues and the production of documents and discovery, you say that some judges seem to frame the issues themselves without really consulting the pleaders.

A. I mean they do not frame the issues at all when they try the case. They frame them at the time of writing the judgment.

Q. If it were laid down that the judge's business is to find out the issues the parties want to fight and not only settle the issues but also to give directions as to discovery of documents and admissions and so on, what do you think of it?

A. Yes. It may be done.

Q. Now, so far as the Code is concerned, if a judge likes, he can do that now.

A. Yes.

Q. As regards documents, the rule is that the plaintiff has to bring in the documents on which he relies along with the plaint. If it is a case for settlement of issues then summons goes to the defendant asking him to bring his documents. You don't really know what documents are going to be relevant until the issues are settled.

A. Yes.

Q. At present I understand that when a case is not likely to come on for hearing for another year, neither the parties nor their pleaders are well posted in the details.

A. Yes.

Q. Do you think that something could be done so that the judge could make an order after settlement of the issues calling upon the parties to produce documents? What you do now is you give him too little time and then condone breaches of the rule.

A. The provisions are ample enough. If necessary, directions may be given.

Q. Now, the High Court's circulars are issued from time to time for particular cases. Don't they get too numerous in course of time? Don't you think it would be advisable if the High Courts were to revise the circulars and properly arrange them?

A. I have not read the circulars of the other High Courts. So far as our High Court is concerned, they are revised from time to time whenever necessary. They are followed very carefully by the civil and criminal courts.

Q. The subjects may in some cases be somewhat too intricate to be known at a glance for the ministerial officers. Have the ministerial officers of the court any excuse for not knowing the circulars?

A. No. They ought to know them.

Dr. DeSouza.—*Q.* So far as I know, they are very difficult for the clerical staff to grasp. The minute details are very very intricate and a man of the type of a clerk would find it difficult to master them.

A. That difficulty can well be solved by consulting the senior clerks of the department. It will be a difficulty to him in his own room. But inside the office there are so many seniors. The judge also is available there for consultation.

Q. The point is, cannot they be simplified?

A. The simpler the thing is the better.

Chairman.—*Q.* There is just one more point. You are inclined to assent to the idea that one should keep the period of 12 years and that the various restrictions under Article 182 do not serve any good purpose. I am also of the same way of thinking but there is one difficulty about *ex parte* decrees. When a man, for the first time, seeks to execute it after 11 years the question will be raised about the service of the summons? How would you overcome that difficulty?

A. In connection with this fact, I would suggest that an application must be made within one year of the decree so that the defendant may be on his guard. A notice must be served on him so that he may be acquainted with the fact that there is a decree against him.

Q. Supposing the man is not served within one year, how much time would you give him?

A. Three years nominally or six years in this sense that after that period the right should be barred. I think six years would be the best period.

Q. Would it be sufficient in the case of *ex parte* decrees? What would you fix for all other decrees?

A. Yes. Twelve years.

Q. Would you allow service to be effected by substituted service or would you like to have personal service?

A. Personal service would be better.

Q. How would you know that the notice was served in the first year?

A. The fact of service may be certified in such cases by the judge in charge of the execution department.

Q. If he gets a certificate, then he gets 12 years?

A. Yes.

Dr. DeSouza.—*Q.* Can you give us an idea of the system of conciliation?

A. Conciliation is a very good thing from the abstract point of view provided we get good conciliators.

Q. My question is directed to find out how far the system of village panchayat courts can be introduced in this presidency. This is, I take, the only province in India where the Local Government has made no attempt to consider the question of having village panchayat courts?

A. I have not studied the panchayat system that exists elsewhere, but so far as the conciliation system goes, I consider it has not been a popular system and the reason may be that conciliators were not happily chosen.

Q. The conciliation system is meant to bring about agreements or compromises?

A. Nothing more than that. Conciliation is useful to the conciliator for elevating himself.

Q. The point of view which I am talking of is that if a proper selection of conciliators is made, do you think the people residing in villages would accept them as judges for deciding suits of a certain value, say, Rs. 25?

A. If proper selection is made, I do not think the people would dislike the idea; on the other hand they would like it because no body is fond of going to a court for Rs. 25.

Q. We find in Madras where this system has been tried that out of the total institutions of five lakhs about two lakhs were below Rs. 25, and some between Rs. 25 and 50. Is there any scope for the introduction of a similar system in this presidency?

A. The matter may be tried in some of the talukas but not in places like Khandesh. Brahmins are educated and they may be found to act as Judges but non-brahmins are not advanced.

Q. Fortunately in this presidency the problem of Brahmin and non-Brahmin has not become so acute as in Madras. All the same the system, if adopted, will not be one of nomination but of election. There in Madras members of the panchayats are appointed for a group of villages and they

have got concurrent jurisdiction? There it has been a fairly successful experiment?

A. We have not gone so far, but we have got the Act of 1920 under which panchayats for sanitary purposes are appointed.

Q. They are called Union Boards?

A. These will be called village munsifs as they are called under the Act itself.

Q. The village munsif will be one individual munsif, but these panchayat courts will consist of three or five members?

A. That is all right.

Q. Do you think the system would work well?

A. As I have said already, the system may be tried provided we get a good class of men to act as members of the panchayats.

Q. The idea is not one of nomination, but generally the idea would be that of election supplemented by nomination to represent certain communities.

A. Yes.

Q. When I put the same question to Mr. Allison he said that there were village factions and the system would not be a success?

A. I was present when he gave his reply.

Q. How far do you think this objection is correct?

A. If the system is based on election, it is likely to work well.

Q. Of course, the advantages of the system are quite obvious, but there are certain disadvantages also.

A. I think the balance is in favour of the advantages.

Q. The advantage is simply this that suits are instituted in these courts merely for the purpose of snatching a decree by dragging it on. The object of instituting suits before these courts is to get money to which the plaintiff is not entitled, but with all that you consider that this system is well worth a trial in this presidency?

A. Yes.

Q. Have you got any idea about the training of pleaders in the mofussil? Do you think that young graduates who have just taken their degrees should be engaged with senior pleaders to have some experience and get training under them?

A. I am not in favour of such a training. The man must learn to stand on his own legs. If he works independently, he will pick up his work very quickly.

Q. Will he get any work in the beginning?

A. He will not and therefore he will go and sit in the court room and try to learn something.

Q. Would it not be better for him to go and work with a senior instead of going alone with no work at all?

A. I do not think so.

Q. If he does not get any work, how will he be able to learn anything? If he is attached to a senior pleader he will try to teach him something by letting him have some cases to conduct in the court?

A. If he gets a case he can go to a senior and try to learn how to deal with it and by doing so he will become conversant with the details that are necessary for a pleader to know.

Dr. DeSouza.—*Q.* Having regard to the large congestion in the Bar in the mofussil—of course you have got a very good experience of the whole presidency—can you tell us whether the touting system is on the increase?

A. No, I should say that it is on the decline.

Q. Do you think that it is a negligible factor in this presidency?

A. Yes. People are aware of these things in these days and they always go to the best man at the Bar. Litigants are clever enough to save themselves from these touts.

Mr. Gupte.—*Q.* You are a Law professor and you have also been practising in the mofussil?

A. Yes.

Q. You have considerable experience of the Bar and you have been appearing before different types of judges.

A. Yes.

Q. You have made some suggestions as regards the recruitment of judicial officers and training of Civilians. Would you make those suggestions clear? You don't want to entrust Civilian judges with independent change of any judicial work?

A. Yes. Our suggestion is that that they should be asked to attend the High Court for a particular number of months. That is something and is better than nothing.

Q. You are not in favour of posting a Civilian as a Judge without any training?

A. No.

Q. You say that more appointments should be open for the pleaders?

A. Yes. Here so far as the pleaders are concerned they are more neglected on the whole as compared with the Advocates and Barristers. A pleader on the Appellate Side has no future for himself. He has only a chance of becoming a Government pleader or of being raised to the Bench—one single man only. Nothing else is open to him whereas the young barristers have a rich crop of things everywhere.

Q. As a matter of fact Barristers go very little out of the town of Bombay?

A. Yes, there are many openings for them here. There are a lot of things for them in Bombay.

Q. You are a member of the Committee, recently appointed by the Government for making a selection for subordinate judgeships.

A. Yes.

Q. Who are the others?

A. There are five persons appointed to recommend names for the subordinate judgeships. Three judges of the High Court, one Advocate and the fifth member myself. This is a secret.

Q. A suggestion was made the other day to the Committee that the selection should be made on the recommendation of the several Bar Associations from the different districts.

A. I believe the Committee would like the idea. Recommendations may be sent from the different Bars and I think they will be considered by the Committee.

Q. Would you encourage the different Associations to do so?

A. They may send on the applications.

Q. Would it be really desirable for the applicants to get their applications forwarded by the Bar Associations.

A. Nothing wrong. It all depends upon the Bar Associations. If they can take the trouble of forwarding applications to our Committee they will be considered by us.

Q. Your Association has dealt with the question of the extension of the small cause court jurisdiction. Am I right in saying that a recommendation was made by your Association that they were against conferring this jurisdiction?

A. Yes, I have got a copy. (The witness presented a type-written copy* to the Chairman.)

Q. You are not in favour of extending the jurisdiction of the small cause court?

A. To a certain extent.

Q. You are inclined in favour of a City Court?

A. Yes.

Q. Taking these two proposals into consideration—one as regards the extension of jurisdiction and the second as regards the formation of a City Civil court—which proposal would you favour?

A. The City Civil Court certainly.

Q. Do you consider that the habits of the small cause courts are such that they result in unsatisfactory dealing with the suits?

A. I do not suppose that their habits will enable them to decide matters well. Once a man gets into the habit of trying suits in a small cause court manner it is not likely that he can change his nature.

Mr. Justice Stuart.—*Q.* May I remind you that Mr. Justice Banerjee was for four years a small cause court judge?

A. That is so.

Q. Are not these two functions combined in nearly every first class subordinate judge?

A. Yes, after a long experience of 18 or 19 years of work.

Mr. Gupte.—*Q.* The main ground on which the extension of jurisdiction of the small cause court is asked for is the saving of the cost of litigation. Do you know that a large number of cases which are disposed of by the High Court are short causes or summary suits and the costs of litigation are comparatively less?

A. So far as the counsel fee is concerned I think they have to pay the same amount.

Q. You see every Tuesday we have 100 cases in the High Court dealing with claims varying from 1,000 to any amount. Out of these 75 per cent.—I am talking of the recent years—result in *ex parte* decrees with the result that the litigant gets a decree at a cost of about Rs. 300 which includes every charge, court fee, process fee, counsel fee, etc.

A. I should rather like to have better facts before answering.

Q. Has your Association taken the trouble of ascertaining the number of suits that are disposed of?

A. The Secretary says he has.

Q. Can you give me the figures?

A. Not now.

Q. Would your Association be more definite?

A. These are the matters in which we have to consult the secretary.

Q. We have got hundred short cases out of which 60 or 70 will result in *ex parte* decrees being passed?

A. I cannot say anything. We both will have to sit together and then take sample cases.

Q. We have got High Court rules?

A. We want the solicitor's bill first of all. It is a point which I cannot answer now.

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* Not printed.

Mr. M. JHAVRI, Chief Judge, Small Cause Court, Bombay.

Written Statement.

1 C. Period reasonably required for disposal of *suits*, one to three months : of execution proceedings, a fortnight to a month after initiation of execution proceedings.

2. Yes : period is exceeded because of paucity of judges, and abnormal increase of work : also because of delay in the service of summonses on defendants.

Whereas in pre-war days the number of suits of extended jurisdiction (claims to Rs. 1,000 and above, generally triable by the chief judge) was 700 to 800 per annum, it is now 2,600 ; and ordinary suits were about 25,000 ; it is now about 34,000 ; the number of judges remains the same.

The special work of the chief judge, *viz.*, hearing of municipal appeals in respect of rateable values, set-back claims, land acquisition cases, cases under the city of Bombay Municipal Act, election appeals under the same Act, and revision of electoral rolls of different constituencies under the Reforms Act, has correspondingly increased. The Bombay Rent Act has also contributed to the increase. Formerly trial of ejectment and rent suits was more or less a formality and now every such suit is contested bitterly. Some of the causes of this increase are permanent. The population has increased and that, as it must, has resulted in increase in litigation. Similarly the continuance and prolongation of the Rent Act throws additional burden on the courts.

3. None : excepting some sort of curtailment of the period provided by o.9 r.5 of the Code of Civil Procedure. The one year's period therein is reduced by the rules framed by the High Court for this court to six months. For presidency towns it can be curtailed to three months.

Sometimes false and frivolous defences are raised. That leads to delay. If power is given to courts to award compensation for raising false and frivolous defences it may check the tendency to raise them.

7. Supervision of the immediate head. He as a rule would know the nature of the work and hence would not be guided by mere numbers of disposal. At the time of appointment, efficiency and experience alone, regardless of community or class, must be looked to and the salary made attractive enough to induce such men to accept service.

8. No : In the city of Bombay as a rule lawyers stick to the courts they select.

9. Increase of jurisdiction of small cause courts in presidency towns, on the lines proposed by the local Government would lead to speedy and less costly justice.

15. Small cause courts in presidency towns may be given jurisdiction over mortgage suits and partnership suits.

Jurisdiction may also be given on the lines of the bill prepared by the Bombay Government. A copy of the bill and my report thereon are herewith annexed and marked A. (Not printed.)

16. Summary procedure under section 128 (2) (*f*) (*i*) may be introduced in the presidency small cause courts in case of claims for and above Rs. 1,000. This can be accomplished by the High Court concerned framing a rule extending the section to such courts.

18. No.

23. No.

24. I find the present procedure as regards the trial of small cause suits working well. No change is desired.

25. It is so : extensive use of the post office would save much time after a suit is filed. This court is doing so in the majority of cases.

Procedure like that under section 106 of the Transfer of Property Act should be reserved as a last resort. The present procedure under the Code for affixing a summons to the residence of the defendant is of a similar nature.

28. Village officials in Gujarat have become educated and efficient now. They can be utilised, and are in fact being utilised.

27. No : they are not neglected.

29. Yes : if such addresses are registered as part of the record, they would contribute to the expediting of proceedings.

30. The process-server is put in contact with the parties in this court, as soon as possible, and the latter assist him in serving the summons and the process.

33. Yes : such examination would tend to minimise the calling of irrelevant evidence, and lead to expedition of disposal, provided the suit is not adjourned after the defendant's evidence and proceeds to a decision.

34. No : witnesses get weary of attending day after day, owing to delay in disposal, and then absent themselves ; warrants for arrest have to issue in several cases ; or short adjournments given to enable them to be sent for : only speeding up of trials can help.

35. No : unnecessary evidence is not let in.

If counsel are asked what their witnesses are going to say and then if satisfied that they are useless, intimating the same to counsel, might perhaps help.

36. *Inquiries into claims* : they are confined in these courts exclusively to moveable property, and identity of same has to be proved ; affidavits would not help therein as much as seeing them in court : oftentimes, a couple of questions in cross examination settles the whole matter.

Ex parte proceedings : sometimes the judge has to ask a few questions to satisfy himself before passing a decree, and affidavits therefore would not help. In our court no appreciable time is taken up in disposing of *ex parte* suits.

37. Courts at present do possess power to stop irrelevant cross-examination. Time-limit may come handy but may be abused at times.

38. Yes : to suits on promissory and negotiable instruments : High Courts have got the power to extend application of Order 37, Civil Procedure Code, to presidency small cause courts.

40. It is not desirable, it would be hard to throw on the legal representative the duty proposed : and after all how is the plaintiff going to prove that the legal representative was aware of the proceedings ? The inquiry may, instead of saving, increase the delay in disposal.

41. No : delay is not caused in this court. Why need trouble all others ? Perhaps the first-named may consent (as, in a majority of cases tried in this court, is the case), and then all initial trouble and expense would be found wasted.

44. Yes, it is so done generally in this court.

45. The judges' clerks as a rule give dates for adjourned suits, in this court, in consultation with the parties and their vakils. In case of difference the judge does it. In case of dates of first or original hearing the rules have fixed the date of the return of the summons ; and no delay is due to this fact.

46. No : not necessary in our court.

47. Yes. It is difficult to say how to control the length of such examination. The delay is caused on account of the following stages in the procedure :

(*a*) The commission has to go from here to a district court.

(*b*) That court has to appoint a commissioner.

(*c*) The commissioner fixes a date suitable to him for examining the witnesses *viva voce* or taking down replies to written interrogatories, as the case may be.

(*d*) That date has to be communicated to the parties at this end.

(*e*) And thereafter they arrange for taking out summonses, etc., to keep the witnesses present before the commissioner.

All this takes up a pretty long time, so that adding to the powers of the commissioner would not help.

If the court issuing the commission is empowered to appoint the nazir or clerk of the district court or some such officer as the commissioner and also fix the date for the appearance before him of the witnesses, then a large part of the delay would disappear, but the difficulty would still remain, as to whether on that date the officer would be free to attend to the work, whether if the witnesses are to be brought up before him from the surrounding villages, that can be done in time, etc.

48. Yes: no amount of costs of the day are sufficient to check the evil, in the case of wealthy parties.

51. The nature of the work in this court has entirely changed, and it has become more or less a commercial causes court. If it be possible to tell off one or two judges to devote themselves specially to commercial causes, there would be expedition. But we are handicapped because of the number of the judges being much less than that required to cope with the work.

54. Yes, this would save great delay and after all one court is as good as another.

56. (*b*) (*c*) Altering article 182, and altering the starting point may be done as proposed.

Latter suggestion is also approved.

58. There is no need for alteration, as if a receipt signed by or on behalf of the execution creditor is forthcoming, that would be sufficient.

59. Yes, an affidavit would be sufficient. The second provisio to rule 16 order 21 may be so modified as to give discretion to courts in deserving cases to order execution.

60. Deletion would work hardship in case of many judgment debtors, like these resorting to this court.

61. (*a*) Special notice is not necessary. Generally, at the hearing of the notice, order for issue of execution is also made, the petition including prayer for the same.

(*b*) The provision is wholesome and should not be deleted.

62. Ordinarily it would work hardship, but if discretion is given in money decrees to the courts, to stay execution on terms, it would suffice.

69. Yes. Considerably: for months together the execution creditor is put off pending insolvency proceedings. If by chance, the adjudication order is cancelled, a fresh order for a fresh insolvency is sprung upon the execution creditor, the moment he serves him with a notice calling upon him to show cause why execution should not issue.

70. Very few.

73. An appreciably long time is taken up by insisting on certified copies; courts should be allowed power to admit secondary evidence in suitable cases.

77. Registration of partnerships would relieve the courts of a very frequent source of prolonged inquiry on the point. The least that can be done would be to make it compulsory for all partnership contracts being reduced to writing, containing the names and shares of the respective partners.

82. There are comparatively few frivolous suits filed in this court. Plaintiffs can sufficiently be punished by fining them under the new amendment of the Civil Procedure Code.

85. It is desirable to give such power in cases where technical points arise, such as about textile fabrics or scientific instruments or building operations, etc.

86. No.

Mr. K. M. JHAVRI, Chief Judge, Small Cause Court, and Mr. R. S. DADACHANJI, Judge, Small Cause Court, Bombay, called and examined on Thursday, the 28th August 1924.

Chairman.—You have been good enough to give us a very careful statement on the points in the questionnaire and also on the small cause court in particular. First of all we will deal with the present jurisdiction, apart from any question of extending it. I see that you say that there has been a great change in the character of the work in recent years.

Mr Jhavri.—A. Yes.

Q. You now get far more commercial cases than you used to get.

A. Yes. It is exclusively commercial.

Q. You don't get suits on ordinary money lending as you used to get before.

A. No. It is now only 10 per cent.

Q. I suppose you have a good many ejectment suits.

A. Yes, after the Rent Act.

Q. Did it not tend to lessen the ejectment suits ?

A. It increased them.

Q. As regards the Rent Act, I rather gather that the disputes as to the rates of rent are coming to an end.

A. Before it expires finally, there will be a large number of cases. We expect about 2,000 to 3,000 cases during the course of the next two months.

Q. As regards special cases, I think, you as chief judge, have to dispose of them.

A. Yes.

Q. Does that amount to a good deal now ?

A. Of late it has increased very much.

Q. I understand that your work under the extended jurisdiction over Rs. 1,000 has increased very much ; so much so that you cannot cope with it yourself.

A. Yes. That is so.

Q. Now, that being the position at present, I take it that you have lately been undermanned to some extent. I mean your work has been getting into arrears.

A. Yes. Much arrears.

Q. One thing I want to ask you is would it not be possible to organise the office so as to prevent the people having to come with their witnesses several times and sent away and asked to come on another date ? I don't think it will be beyond human capacity to devise some means of limiting that. I take it that that obtains to a certain extent at present.

A. Yes.

Q. In order to enable a judge to have a list of cases to be heard, one good idea, if possible, would be to require people to file a notice of appearance or something of the sort at any rate a day before the hearing date, put all the *ex parte* work in one list and let it be done either by the registrar or by a junior judge or by somebody, if possible. Don't you think that some attempt might be made to give relief on those lines ?

A. The parties generally start from their place just a day before the hearing, and go to their pleaders on the date of hearing to give instructions. If a suit is reached on the first day, every time you will hear the pleaders getting up and saying "please give me an adjournment."

Q. If you know the defence, can you know what time the trial will take ?

A. Even if you know the defence you are not in a position to know whether the case would take any time or not.

Q. What I want to suggest is that the judge's list should remain within a reasonable compass ?

A. We do not adjourn many suits on the same day. So far as new suits are concerned good many of them which are not contested are disposed of early in the morning and nearly half the work is finished. Of the remainder, the adjourned and part-heard suits are given preference.

Q. Does it not often happen that the judge says at four or five o'clock in the evening that he cannot take up the case and adjourns it to another date ?

A. That is very rarely done. There are only two or three such cases in each court. Here pleaders know whether their cases will be reached or not.

Q. What sort of list do you make here ? We were told the other day by a practitioner that a list is made out by the judicial clerk in a certain order, *i.e.*, whether a case is likely to be defended or not and so on ? Do you think that if a member of the public goes through that list he will be able to understand in what order cases have been put down ?

A. There is a list put up and the cases are taken up in order. When the judge is told by the judicial clerk that it is an admitted matter or there is no contest or something of the sort, then the order is broken, otherwise suits are taken up in order just as they are placed in the cause list.

Q. But we were told by one of the practitioners that the list is put up more or less in an haphazard manner, *i.e.*, without considering whether the case is defended or not or whether it is likely to be taken up or not ?

A. The pleaders here know whether their cases would be reached or not. The practitioner might have told you something like this. Supposing there are 200 cases and there are four judges. The registrar has to distribute them among these judges and has to prepare a cause list. As he has to distribute the cases equally among the judges, he takes up the bundle and goes on marking judge 1, judge 2, judge 3 and judge 4. That is done rather in a haphazard way and that is how the work is distributed by the registrar.

Q. I understand suits are taken up according to the number in which they are filed ?

A. Yes.

Q. Do you not think that the judges on one day in the week should have no fresh cases at all ? They should try part-heard and adjourned cases only ?

A. As a matter of fact that is being done by the judges. Judges have got an off-day when they try old cases and try to clear off the arrears. They do not take up fresh cases on that day.

Q. Do you not think that something must be done to prevent witnesses and parties coming and going back several times ?

A. I and my colleagues feel that something should be done, but we are at a loss to know what to do.

Q. Your registrar, I understand, is entirely occupied with office work ?

A. Yes, he also does some quasi-judicial work, for instance, when judgment debtors are arrested, they are brought before him. He is also concerned with distress matters.

Q. I suppose you can devise a means for separating contested work from uncontested work and the registrar can dispose of the uncontested work ?

A. Not now. His work has also increased ; otherwise under the Act we have got power to transfer cases to him up to Rs. 20. His whole time is taken up in administration work and it is not possible for him to do uncontested work.

Q. Supposing you give him uncontested work, I think he is quite competent to do that work ?

A. It depends upon the registrar. If he is an LL.B., then he can do it. At present we have got a lawyer and he is quite competent to do that work.

Q. What I want is to give a manageable list to the judges. This *ex parte* and undefended work can easily be disposed of by the registrar ?

A. But there are certain matters, such as breach of contract and so on, in which some evidence has to be taken.

Mr. Justice Stuart.—*Q.* Why do you mix up the work in that manner ? There should be division of labour. Why should one judge not take institutions and as soon as he finds that a case is contested transfer it ?

A. Yes, he could transfer it to the file of some other judge.

Q. How many cases do you ordinarily put up on your list every day ?

A. Forty new suits.

Q. How many old ?

A. Eight to ten. We cannot fix more. As a matter of fact one cannot know what time a case is likely to take. Some cases are disposed of very soon. A case which in the beginning seems a big one is disposed of very soon while a smaller one takes a long time.

Q. Suppose you get a five hours' case—Can you not put that up for another judge ?

A. One cannot say what time a case is likely to take.

Q. Why not ? Can you not ask the counsel to let you know what time his case will take ?

A. We cannot get a correct estimate. At 4-30 P.M. we always have threats from a counsel that his case will take a very long time but before 5-30 P.M. the case is finished.

Chairman.—As regards the question of written statements I take it that in the small cause court no written statement is compulsory unless the court orders it. But does it usually happen that the people turn up on the date of hearing with their written statements ?

A. No, our clerks have instructions to ask the counsel to put in a defence, *i.e.*, whether they deny execution or consideration or something else.

Q. When do they do that ?

A. In the course of the day.

Q. Do they write this down on a slip of paper ?

A. Yes.

Q. As regards new trials, I understand that the trial judge does not sit here ?

A. Not for the last six years.

Q. I understand that it is regarded as a full right of first appeal both on facts and law ?

A. Yes. It takes up a whole day.

Q. Is the number of appeals excessive ?

A. It is excessive. It is bound to increase corresponding to the increase in the number of institutions.

Q. By excessive I mean, do they abuse the right ?

A. No. Even if an attempt is made they would not succeed. They do try this occasionally.

Q. How long does a new trial take to come off ?

A. Following Tuesday.

Q. So that there is not great gain in time.

A. No.

Q. Tell me if you ever felt the necessity of issuing an order for the attachment before judgment of immovable property ?

A. We have no power to attach before judgment.

Q. But do you have any such case before you where you wish to have the power of attaching immovable property ?

A. We never felt it. In our court a decree is made and then it is taken to the High Court.

Q. Now take the right of reference. Is that much exercised in your court ?

A. Not much.

Q. Do you find that the reference section works very well ?

A. Yes.

Q. You feel no difficulty in stating a case where there is a difference of opinion. Do you think it is quite easy to get the opinion of the High Court satisfactorily by stating a case to them ?

A. Yes, we never felt any trouble.

Q. How many cases were sent last year ?

A. I have been chief judge here for the last six years and in my time three or four references were made, and in one of those cases the High Court remarked that a reference need not have been made.

Q. That, of course, is a matter of opinion.

A. There is not much scope for reference because the High Court is dealing simultaneously with the same questions on the Original Side as we deal.

Mr. Justice Stuart.—*Q.* How far has this new legislation as regards rent increased your work ?

A. In early years there were very many cases of this sort because every landlord wanted to eject his tenant and every tenant resisted.

Q. How far has your staff been increased ?

A. Not at all.

Q. What was the staff when you joined this court six years ago ?

A. There were five judges.

Q. One chief judge and four other judges.

A. Yes.

In 1919 I wrote to the Government for additional help and an additional judge was sanctioned, but after a couple of years the question of retrenchment arose and that man was removed.

Q. Had the work been so reduced as to justify the withdrawal of that officer ?

A. No, not at all.

Q. They simply took him away saying that they wanted the money for other purposes and could not spare anything for this purpose ?

A. Yes. They gave us another additional judge for eight months in March last.

Q. Have you any figures ?

A. I am afraid I have not.

Q. Would it be too much trouble to you to ask your office to have a list prepared giving the number of judges, number of institutions, number of disposals, number of contested disposals, say for the last ten years?

A. All these figures are ready because I had to submit them to Government.

Q. Those are the very figures that I want.

A. I shall certainly send them.

Chairman.—I see you say that jurisdiction might be given over mortgage suits and partnership suits. As regards partnerships, do you mean suits for taking accounts of partnerships or suits for dissolution of partnerships, and taking accounts ?

A. I mean accounts of partnerships.

Q. Of course you might get mortgage suits where though the mortgage money is very small, there are all sorts of complications. Can you specify any kind of mortgage suits, up to a certain value, which may be dealt with by the small cause court ?

A. I think there should be no difficulty in dealing with these mortgage suits, for after all we are recruited from the same bar from where subordinate judges are recruited in the district, and who deal with these cases.

Q. Apart altogether from any question of dividing the small cause court, and making it to apply the Civil Procedure Code, in some cases what should be the pecuniary jurisdiction of the small cause court ?

A. From three thousand to four thousand rupees.

Q. Without any right of appeal ?

A. At least up to three thousand rupees, the jurisdiction must be exclusive because now a days the defendant goes and gets his suit transferred on deposit of four hundred rupees. It is only the dishonest defendants who get their suits transferred.

Q. Of course under the Act the Judge has to do it ?

A. Yes, but if this is taken away and power is given to the High Court to transfer then the other party will be heard.

Q. Do you think that you can increase the jurisdiction up to three or four thousand under the present system, without any right of appeal ?

A. I see no harm.

Q. While keeping to the present system, do you think that there is anything excluded by section 19, that ought not to be excluded ?

A. Partnership accounts.

Q. Where it is a mere question of accounts ?

A. Yes.

Q. Are accounts generally excluded from the small cause court ?

A. Only partnership accounts. We have not got a special commissioner and for practically the whole day seven or eight pleaders sit on the other side of the chamber and go on doing the work.

Q. How does that work get on ? Do you think that vakils do it promptly ?

A. Yes.

Q. You are not in favour of appointing an official referee ?

A. That will be a block, specially because we have cases arising from the Punjab and Madras and they would have to be sent back from time to time. Here we can get a vakil and he finishes it in six or eight days. If there is an official commissioner and he forms his own time-table and works according to it rigidly, it will take a very long time. But if you distribute the work among eight or nine people, that works much better.

Mr. Justice Stuart.—*Q.* Is it not your difficulty that you are under-staffed. Do your judges turn out less work than they used to ?

A. They turn out much more.

Q. What was the salary of the extra officer whom they took away ?

A. Rs. 1,100 a month.

Q. I do not really quite understand this question of retrenchment. I take it that your income is increasing every year ?

A. Last year the surplus was seven lakhs. About seven years ago it was one lakh then it became three lakhs, then five, and last year it was seven lakhs.

Q. Is it not a fact that the more you increase your staff the more the work increases and the more the profit you get ?

A. It was put to Government by me in that way, but then they said that Government was retrenching in every department.

Chairman.—You think that summary procedure under section 128 might be introduced in the small cause court ?

A. Yes.

Chairman.—As regards Order XXXVII, that does not apply.

A. It applied under the old code. When the new code was introduced, it was dropped out. I want it to be introduced again. That can be done by a rule of the High Court only. There is one thing which I would like to suggest on the question of jurisdiction. In ejectment suits formerly the limit was Rs. 5,000. In those days there were hardly 500 houses which would be excluded. Now the present value is much larger and a large number of houses are taken out of the jurisdiction of the small cause court and much time of the High Court is unnecessarily wasted. Up to Rs. 5,000 or 10,000 we could easily try them. That jurisdiction must be taken away from the High Court.

Q. You don't require a High Court for that class of case.

A. Not at all. The only question involved, in those cases is whether a legal notice was given or not.

Q. Do you get people coming and saying "I have got an oral lease for extension. I will go to the High Court for specific performance?" Then in the meantime the case cannot be tried and will be held up.

A. If any question of title does arise then it will have to go to the High Court. But that does not really arise. There are hardly 2 or 3 such cases in a year.

Q. As regards process-serving, do you use the post office a good deal ?

A. Some of us have been using the post office.

Q. Do you use it as an additional measure or as a subsequent measure if the defendant could not be served in the ordinary way ?

A. We are using it as a subsequent measure.

Q. Would you tell us how it is worked in Bombay ?

A. In every case in which it is applied for, I am granting it. I have not heard of any miscarriage of justice or any party making a grievance of it.

Q. Don't you sometimes get returns as "refused" the defendant afterwards appearing and saying that he does not know anything ? Then the plaintiff finds that he has to begin the whole thing again and fight his case.

A. That would happen when the bailiff goes and pastes the summons.

Dr. DeSouza.—*Q.* Do you always insist on the plaintiff's man going with the bailiff ?

A. Yes, unless the bailiff knows the man or knows the place.

Mr. Justice Stuart.—*Q.* Who is in charge of the bailiffs ?

A. The registrar.

Q. Is the bailiff a reliable man ?

A. Yes.

Q. What is his salary ?

A. He is paid Rs. 50 a month.

Chairman.—I take it that as a matter of fact the bailiff would not go from his town, unless he is paid something.

A. If the bailiff is sent out alone many a defendant would bribe him. If the plaintiff's man were there, it would not happen. Or, if the summons is sent by registered post, it does not happen.

Mr. Justice Stuart.—*Q.* What class of men are the bailiffs ?

A. They come from the middle class people who have studied up to the Vth or VIth standard.

Q. Are they superior to the class of men recruited for the city police ?

A. Yes.

Dr. DeSouza.—*Q.* Is there no increment of any kind ?

A. I think their pay goes up to Rs. 75.

Mr. Justice Stuart.—*Q.* What salary would a man of that class get if he were working for a bank on similar duties ?

A. Rs. 60 or Rs. 70.

Dr. DeSouza.—*Q.* With regard to service by registered post, do you take the return made by the postman as conclusive evidence of service ?

A. Yes. If any one comes and disputes it then we make an enquiry.

Q. You do not require any affidavit ?

A. No.

With regard to literate persons you get the signature of the person, but what do you do in regard to persons who are not literate ?

A. We get their thumb impression.

Q. Do they take the thumb impression properly ?

A. They are trained in that. Our bailiffs have also to take thumb impressions and they are trained to do that.

Q. Do you ever have complaints about process-servers from the public ? Do they complain about the bailiffs' extortion ?

A. They do some times complain about bailiffs' extortion, about bailiffs delaying service of the process or bailiffs asking for gari hire. We have made a rule that gari hire should be deposited with the registrar and every plaintiff has to pay it. The difficulty is that nobody has the courage to report the matter officially. They make complaints and say that the bailiff should be punished, but never come forward and write out a complaint against him officially. How can we punish them unless we receive complaints in the regular manner. Although we believe that a particular bailiff has extorted five or ten rupees, yet we cannot do anything unless the complaint is made officially.

Q. I think you have got the system of beats, that is, the city is divided into certain number of beats or circles or wards and the bailiffs are allotted wards according to their number on the list ?

A. Yes, we have that system.

Q. As far as I remember Mr. Duval objected to this system in Bombay on the ground that there is no equal distribution of the wards. In some wards there are more processes and in others there are less ?

A. When Mr. Duval came here I was working as chief judge. He stayed here for a week and went over the whole of the system of the small cause court working and he probably took the cue from here.

Mr. Justice Stuart.—*Q.* Is the chief advantage of this system that the bailift gets to know the locality ?

A. Yes.

Q. As regards conveyance hire, which is taken from every plaintiff and deposited with the registrar, if a bailiff takes five or six processes in the same direction does he get the whole amount for that round ?

A. The whole amount is divided among the bailiffs at the end of the month.

Q. How much is each plaintiff charged ?

A. That depends upon the distance.

Q. How much does each bailiff get under this head every month ?

A. I cannot say.

Mr. Justice Stuart.—*Q.* Do you not think that the remedy is to put in a superior man as head bailiff ?

A. There is the question of salary and there are many who are getting the maximum salary.

Dr. DeSouza.—*Q.* What is the pay of the registrar ?

A. Rs. 550—750. The present registrar is getting 750. He is a lawyer.

Chairman.—Coming to the question of extended jurisdiction, you are in favour of the extension and I understand the High Court has also reported in favour of that ?

A. Yes.

Q. What is your suggestion with regard to the establishment of a city civil court in Bombay ?

A. In our opinion a city civil court would mean more delay. In a place, I mean commercial and industrial place like Bombay, you want expedition which you will not get if a city civil court is established. It would be worse than an ordinary subordinate judge's court. In that the Civil Procedure Code will have to be followed and there will be great delay, but if extended jurisdiction is given to the small cause court then the cases will be decided very quickly. I am of opinion that summary procedure should be introduced all over India in all courts.

Mr. Justice Stuart.—*Q.* Is the delay in the procedure prescribed by the Code itself or is it in the manner in which it is followed ?

A. We are of opinion that summary procedure should be introduced all over India in all cases up to Rs. 2,000.

Chairman.—*Q.* The only difference between the small cause court and the ordinary civil court is that the small cause court judge does not take full notes of the evidence ?

A. We do take. In most cases evidence has to be interpreted.

Q. The whole idea of extending the jurisdiction of the small cause court is to save expense to litigants ?

A. I do not consider that the High Court is a very costly institution. It is not a very costly machinery in the generality of cases. Now unfortunately there has been delay on account of excessive litigation, but while I was practising there, I did not notice that it was a court where there was any delay. I have practised on the Original Side of the High Court for five years. I have also practised as a vakil in the small cause court and in my opinion the work on the Original Side was cheaper and more expeditiously done in the generality of cases. When there is no reasonable defence, a responsible counsel will never advise the defendant to make a defence.

Mr. Gupte.—*Q.* Is not this congestion of work temporary ?

A. I am not sure. You must remember that the more the trade is increasing and these American and German firms are coming to Bombay and the more the population of the town of Bombay increases, a great number of cases should be expected.

Q. Are you aware that the High Court has introduced summary procedure in great many cases with the result that costs in those cases are minimized to a great extent?

A. Yes.

Mr. Justice Stuart.—*Q.* Are the costs in a contested suit in the High Court greater ?

A. Yes.

Mr. Gupte.—*Q.* May I ask you one little question. Do you think that the small cause court Bar would be able to do justice if the jurisdiction of the small cause court is extended ?

A. Some of the members of the Bar are very able people indeed. They would not take long to do justice to the work.

Q. As regards the judges what salary do you think they will require—I mean a salary attractive for them?

A. You will not be able to get a practising lawyer who is really able at any salary. You must remember that recently many barristers refused the Judgeship

of the High Court; and for a small cause court you cannot get such a man whether you fix the salary at Rs. 1,000 or Rs. 3,000.

Dr. DeSouza.—*Q.* What is the monthly income of the leading members of your Bar ?

A. Some short time back they had between five thousand to seven thousand rupees.

Q. And now-a-days ?

A. 3 to 4 thousands.

Chairman.—It is no good saying then that such and such salary would attract a man from the Bar.

A. Yes. We must catch hold of the man when he is just rising. It is no use asking a man to accept an appointment when he has reached the highest position. Recruitment should be made from the people who are in practice and just rising and not when they are likely to refuse. When people struggle for a post they never get it and when they don't want it, the post is offered to them.

Mr. Gupte.—*Q.* Do you think that an introduction of a low scale of fees for suits below Rs. 5,000 in the High Court would do well ?

A. No. Parties never look at the taxation and they want to engage a good counsel. It is ridiculous to say that counsel are taking high fees.

Q. No, I don't mean that. The public complaint is that costs are proportionately high, in comparison with the amount of litigation involved, in small suits.

A. In subordinate courts the costs are not lower.

Q. If you take into consideration the court fee and vakil's fee, etc.

A. Then they come proportionately to the same thing.

I have one suggestion to make before leaving and though it is not as regards the small cause court yet I would like to ask this Committee that the Deccan Agriculturists Act should be totally abolished or its jurisdiction confined so far as agriculturists are concerned. Many of them are Sahukars in their own districts and a large number of these people are traders in Bombay and send maunds of cotton outside, but they still come in and say that they are Deccan Agriculturists.

Mr. Justice Stuart.—He enters into large transactions in Bombay and when a suit is filed against him he says I am a poor rustic.

A. Yes.

Dr. DeSouza.—*Q.* Have you got many such cases ?

A. Every day we dismiss one or two such cases. A man trades in Bombay, he is dealing with a Bombay man, and makes profit out of him. Then he drops out from that profession and when a suit is brought against him we find that he is an agriculturist and we have no jurisdiction. The proper thing is either to repeal this Act or to restrict the definition of the agriculturists a little more so that the protection should be only with regard to *sahukars* of his own district.

Chairman.—I understand that matter was brought before the local Legislative Council, and they rejected the proposal to amend the Act ?

A. I think the Government can modify it.

Q. You see that this is a matter of policy, and a matter of local policy for the Local Legislature, based on for reasons which we cannot enquire into. The only question is whether any such recommendation for the purpose of civil justice would be likely to have very much effect ?

A. So far as we are concerned, a large number of honest plaintiffs are denied justice.

Q. I appreciate that, but the question is—does your Legislature think that a sufficient reason for abandoning some other policy ? That is a question upon which you cannot presume anything.

A. Whatever property he may have may be attached.

Q. That is quite a different question.

Letter from N. P. Pavri, Esq., M.A., LL.B., Registrar, Court of Small Causes, Bombay, No. 5113, dated 1st September 1924, to the Secretary, Civil Justice Committee.

With reference to the information given by the chief judge the other day to the Committee, I am directed by him to state that his statement about the bailiffs' gharry hire being "pooled" with a view to distribution is not quite accurate. Such gharry hire, when taken from the party, is at once made over to the bailiff concerned—it is not kept in the office at all.

When the party accompanies the bailiff to serve a process, the party is directed to pay the gharrywalla himself. Bailiffs are strictly forbidden to take any gharry hire direct from any party. Where, however, the party does not wish to go with the bailiff and the whereabouts of the party to be served are known to the bailiff, the gharry hire is received in the office from the party by the registrar or his deputy or by the head bailiff (and the chief judge had this fact in mind when he was before the Committee) and made over at once to the bailiff who is to serve the process. Where one plaintiff has filed several suits against several defendants who are all to be served at one place or near by each other, only one gharry hire is charged. Where different plaintiffs have filed suits against one and the same defendant then, too, only one gharry hire is taken. It rarely happens that different plaintiffs who have filed suits against different defendants, band together to go with the bailiff at the same time. But if two or three such go together, then each pays the gharry for his distance only. For instance if a plaintiff has to get a process served at Byculla and another at Chinchpogly further away, and if both go together the former pays the fare from the court to Byculla and the latter pays it from Byculla to Chinchpogly.

In the matter of this gharry hire of the bailiffs, it should be borne in mind that thousands of processes are received by this court every year for service from all parts of India and beyond, and under the strict orders of Government they are required to be served without any gharry hire being charged to the transmitting court or the service of any one from there being requisitioned to point out the defendant. These are distributed among the bailiffs of the section and they serve them while on their rounds for serving local processes.

The chief judge requests that you will kindly ask the Committee to be good enough to make the slight correction as above in his statement on this subject.

A copy of the notices put up in conspicuous places in the court house is herewith forwarded.

Notice.

Suitors are requested to make an immediate report to the registrar or one of his assistants if they have any occasion to complain of the conduct of any of the bailiffs or clerks of this court.

Suitors are reminded that any bailiff, peon, or other officer of the court (whether European or Indian of whatever grade) who demands or corruptly accepts any fee or reward whatsoever acts illegally, and renders himself liable to dismissal and other penalties under Chapter IX, Indian Penal Code.

Suitors and others are also informed that those offering or giving bribes are equally liable to punishment under the Indian Penal Code (Sections 109 and 116) with persons asking or receiving the same. They are also warned not to pay money in any shape, or on any pretext whatever, to any member of this establishment and members of this establishment are strictly prohibited, under pain of dismissal or prosecution, from receiving any money from suitors.

When a bailiff is accompanied by a suitor or his agent to serve a process the conveyance should be provided, and the driver paid by the suitor or his agent

direct. When a bailiff proceeds alone to serve a process the hire of the conveyance should be paid by the suitor or his agent to the registrar or his assistants and by him handed over to the bailiff.

COURT OF SMALL CAUSES,
Bombay, 13th June, 1914.

F. D. SPENCER,
Registrar.

Written Statement of the Ahmedabad Bar Association.

1. The period of disposal is governed by many factors such as the judge, the pleaders, the parties and the nature of the case. It is not possible to give a general forecast as to the period of disposal.

Under normal conditions, a contested suit would require, on an average, about a year and simple money suits may require 6 to 9 months.

Appeals would require ordinarily 6 to 9 months and civil miscellaneous appeals would require 4 to 6 months.

Small cause suits would require 6 months.

Claim proceedings in district courts and subordinate courts would require about 6 months.

2. The period now taken up in the disposal of proceedings referred to in para. 1 does generally exceed the time it ought reasonably to take.

The main causes of delay shortly summarised are :—

i. Want of strict observance of the provisions of the C. P. C. relating to admission of documents, examination of parties, interrogatories, discovery, etc., prior to the regular hearing.

ii. Tendency of some of the judiciary to take up simple matters in preference to complicated and contested matters to show better disposal returns.

iii Delay in issue and service of processes on the part of the office staff.

iv. Congestion of work at certain centres particularly at Ahmedabad.

v. Want of promptitude and vigilence on the part of litigants and pleaders.

3. (i) A greater sense of duty all round with a desire to secure justice.

(ii) Determination of efficiency of judges by the quality of their work rather than by the quantity.

4. As regards subordinate judges, in the Bombay presidency the method of recruitment which prevailed before the appointment of the selection committee was open to objection and needed improvement, but the recent formation of a special committee by the Bombay Government under the new rules for recruitment to the subordinate judge's grade is a welcome improvement, but we are not sure whether efficiency is followed as the only test for selection. In our opinion the age limit should be raised to 35 years in order that the test of efficiency may be fully availed of. In that case we would recommend that the qualifying period of practice at the Bar should be raised from three to five years. We believe that in spite of the special selection committee's recommendations, the appointments made by Government in the current year introduce the questionable principle of giving preference to candidates from the backward classes which has resulted in subordinating the principle of selection by efficiency to questions of policy. We would suggest that even after selection the recruit should attend for a particular period the Original Side of the High Court. The practice hitherto followed by Government in making selections from the Bar to assistant and district judgeships appears to us to need improvement. Seniors at the Bar in the top rank and of approved character and independence ought to be selected and if found unwilling they should be pursuaded to accept such nominations so that the recruitment from the Bar may maintain the high level of efficiency required for the post.

In making selection from the Bar no considerations should be allowed to operate except those of efficiency and character.

Again, district judgeships should be thrown open to the Bar.

Members of the I.C.S. should, as a rule, before entering on judicial duties, be required to attend both the sides of the High Court for at least six months.

5. We do not answer it as there are no district munsifs in this presidency.

6. We do not think that transfers impede or delay justice.

7. The standard of efficiency ought certainly not to depend upon the number of cases disposed of as shown in monthly returns. Efficiency could properly be judged from the judgments and this could be properly assessed in appeals. Appellate judges should be required to note their opinions formed in deciding appeals in a separate confidential record. If judges worked for full time in court, the amount of work done would be proportionately greater.

8. Yes. The delay is in a way partly due to conflict of engagements of the members of the legal profession. At centres where there is a concentration of courts, there is a natural desire among litigants to have the services of seniors, and in contested cases, the courts even desire their presence. As each court makes its own board the conflict of engagements to members of Bar is inevitable. Again, suits as well as appeals are filed in one court and they are distributed for disposal to several courts which brings about conflict of engagements of members of the Bar. Where judges are deputed for the disposal of arrears, work is provided to him by transferring cases from the file of other courts resulting in bringing about unavoidable and unthought of clash of engagements.

9. No, so far as the courts in the Bombay presidency are concerned.

10. There are no district munsifs in the Bombay Presidency, and as for provincial small cause courts the pecuniary jurisdiction should not be enhanced. We beg to suggest that the present enhancement of jurisdiction from Rs. 500 to Rs. 1,000 is not proper.

11. This question does not concern the Bombay Presidency.

12. No.

13. No. Except applications under Bom. Reg. 8 of 1827 and Act VII of 1889 which have been already transferred in the Bombay Presidency to the subordinate judges.

14. There are no village courts and panchayats exercising jurisdiction in Gujarat.

15. No, as regards part (1).

16. (*a*) No.

16. (*b*) Does not relate to Bombay Presidency.

17. No.

18. No.

19. No. We do not approve of the proposal.

20. No.

21. No.

22. The power as to the admission of appeals is duly exercised. It must however be said that the exercise of this power varies according to the personnel of the judge, and in the case of first appeals, it sometimes errs on the side of severity.

23. We do not think that the right of revision is abused. At times the fact that a proceeding is open to appeal or revision works as a very wholesome check on the judiciary 23 (1). We do not approve of the suggestion about depositing decretal amount in case of revisional petitions.

23. (2) The right of moving the High Court in revision under section 115, C. P. should not be restricted any further.

24. We do not think that any material change is needed in the procedure. The remedies for securing speedy and economical justice are suggested in the various answers to these questions.

25. The present provisions for the service of summons in the C. P. Code are sufficient. Much depends upon the honesty of the process servers.

26. The forms of plaints provided for in the C. P. Code are usually followed and we see no necessity to introduce English forms. No provision of penalty is called for.

27. The provisions referred to are not neglected much.

28. We believe that service through post is an effective and less expensive method. More extensive use of it will reduce the cost of process fees. It would not be advisable to use village officers for this purpose.

29. Such a rule would be advisable.

30. The suggestion is not open to objection.

31. Provisions made in the C. P. Code for framing issues are quite sufficient if followed in the right spirit.

32. Provisions of Order 10, C. P. Code, regarding the examination of parties are observed more as a matter of form and not in substance. Provisions of Orders 11 and 12, C. P. Code, are largely neglected and very rarely availed of. Most of the judges hardly care to enter into the facts of the case and the pleadings at the initial stage with the result that the members of the Bar remain indifferent about them. The remedy lies in the judges observing and enforcing observance of these provisions.

33. Thorough examination of the parties at the initial stage for ascertaining the points of controversy is desirable ; but if it takes the form of compelling the parties to describe the nature and details of their evidence, it would act prejudicially and often give rise to complications. We do not agree to the suggestion that the summoning of witnesses should be made only after the parties are examined as proposed above.

34. The rule is generally observed.

35. As a rule unnecessary and avoidable oral evidence is not let in the courts of the Ahmedabad judicial district. It is not possible to suggest any remedy which may not be liable to be abused.

36. Wherever the merits of the case permit disposal on affidavits, the practice is followed. It would not be advisable to rule out oral evidence as proposed. Therefore the suggestion is not approved of.

37. The suggestion is not feasible and it would not be just to fix any time-limit for examination or cross examination of witnesses. The courts have got discretionary powers to disallow irrelevant questions.

38. The procedure under this Order would work great hardship in the mofussil and would in many cases amount to denial of justice.

39. The exact significance of this question is not clear and unless the idea underlying the question is developed by concrete instances it is difficult to answer it. We are afraid complications would arise if a sweeping provision is made as regards the class of cases indicated in the question.

40. We don't approve of the suggestion. The present provisions in such cases are quite adequate. The penalty of binding an absent legal representative on the assumption that he was aware of the proceedings would create complications and would defeat the object of the proposal which we take to be the prevention of delay.

41. We don't think that in our district any avoidable delay takes place in appointing a guardian *ad litem* for the minor.

42. We are not prepared to say that undue advantage is in some cases not taken in obtaining *ex parte* orders. If judges were to be more careful in exacting suffi-

cient grounds for making such orders we are of opinion that the abuse would be checked to a considerable extent.

43. We do not think that judgments of courts are unduly long in our district. We would not encourage a tendency to write perfunctory judgments.

44. Points of law going to the root of the case are usually set down for preliminary hearing in proper cases.

45. Dates for original cases which are ripe for hearing and for their adjourned hearing are generally fixed by judges themselves. We do not think that except in rare cases the fixing of dates leads to delay in the disposal of cases.

46. Ordinarily pleaders are consulted by courts in order to have some idea as to the time likely to be taken by oral evidence and thereafter for arguments. It is impossible to lay down any rule in this regard as we do not think any delay in the disposal of cases results by the absence of such a practice.

47. Commissions for examination of witnesses outside the courts are not usual and we do not think that any steps are necessary to control the length thereof. Further we do not think that interrogatories would ordinarily serve the purpose.

48. Decidedly not. We do not think that the awarding of day costs would prevent frivolous applications for adjournments which are rare.

49. As a rule cases are tried day by day in the courts of our district.

50. Yes.

51. It is essential to give special expedition to commercial suits particularly at industrial and commercial centres. At centres where there may not be sufficient work for a special judge for such cases, it would suffice to issue instructions to judges to give precedence to such cases.

52. The procedure laid down in the Civil Procedure Code relating to the execution of decrees does not in our opinion need any amendment at present.

53. We do not think that the extension of principle of section 21 of Civil Procedure Code is called for in our district.

54. We approve of the suggestion, but in such cases the executing court should keep the original courts informed of its orders.

55. We approve of the suggestion.

56. We do not approve of the suggestion to curtail the period of limitation prescribed in section 48, Civil Procedure Code, and Art. 182 of the Limitation Act. As regards the starting point of time taken we approve of the suggestion that it should be from the date of the last order. We also approve of the suggestion to do away with the provisions requiring applications for execution should be made within stated periods. We think that a decree holder should be free to apply for execution of his decree at any convenient time within 12 years.

57. If the proposal contained in this question with reference to section 66 of C. P. Code is intended to modify the rigour of existing provisions we see no objection to it.

58. The suggested restrictions would rather work hardship on the judgment debtors living in out of way places. We should however welcome an alteration in Order 21, rule 2, so as to make payments through the suggested agencies certified payments.

59. We do not approve of the suggestion to delete or modify proviso 2 of Order 21, rule 16. We see no objection to the suggestions made in the former part of the question.

60. We see no objection to the deletion of Order 21, rule 21, so as to allow execution of decrees simultaneously both against person and property.

61. There is no objection to the deletion of notice under rule 22 (1) (*a*) of Order 21. Other provisions of the rule ought to be retained.

62. Prohibition of *interim* stay under Order 21, rule 26, would work hardship.

63. To prevent frauds arising out of corruption or collusion it would not be safe to dispense with any notice as proposed by the question at all the stages of execution.

64. The suggestions made in this question do not seem to us reasonable and they would work hardship.

65. No. Servants of revenue department ought not to be invested with such power.

66. The issues involved in this question are too fundamental to be dealt with as a part of the inquiry to avoid delay in the disposal of civil proceedings. We appreciate the suggestion as to the desirability of clothing the purchaser in execution of a mortgage decree with a right to the property free from future litigation and free from all incumbrances as much as possible. But we apprehend that if an attempt is made to penalise the plaintiff by dismissal of the suit for non-production of an encumbrance certificate with the plaint, it would work injustice. We think that if the plaintiff in such a case is left free to produce such a certificate within a reasonable period it ought to meet the requirements of the case. As regards the suggestions in (*b*) (*c*) (*d*) they appear to be dependent upon the suggestion made in item (*a*) being enforced.

Six months time allowed by law for payment under the preliminary decree is reasonable and necessary.

We think that it would be more convenient that personal decrees should be passed along with the mortgage decree with a proviso that the former should not be executed before the security under the latter is exhausted.

67. We don't think that any avoidable delay is caused in the disposal of execution proceedings by frequent orders of stay from appellate courts. We do not think it would be proper to curtail in any way the power of the appellate courts in granting stay orders or to invest them with any power to award exemplary compensation.

68. We do not approve of the suggestion to curtail the existing powers.

69. The insolvency law is for giving a fresh start to *bonâ fide* debtors. But unscrupulous people take undue advantage to baffle real creditors. Insolvency petitions deserve to be expedited. In our province the delegation has already been made. In a centre like Ahmedabad a special competent insolvency judge is required to attend to such work.

70. After the enactment of the Provl. Insolvency Act instances of absconding judgment debtors are getting rare.

The provisions of arrest and attachment before judgment are effective remedies to prevent any delay due to such absconding.

71. We do not think that the law of evidence is at all responsible for protraction of triasl.

72. We do not approve of the suggestion. The plaintiff must be put to the proof of execution and validity of the mortgage deed in all cases in which it is not admitted.

73. We do not think much avoidable delay is caused in procuring certified copies. We do not consider it desirable to amend the existing law as regards secondary evidence. Relaxation of the existing rules may lead to fraud.

74. The law of limitation is sufficiently stringent and we are of opinion that it should not be made more stringent.

75. The human element plays a far more important part in the administration of justice and we think that no changes in substantive law would secure the result desired.

76. We do not approve of the suggestion that all future partitions of immoveable properties should be by registered documents.

77. We do not agree with the suggestion.

78. We do not think that the doctrine of part performance practically negatives the provision of the T. P. Act, and we would not disallow it scope in this country by endorsing the proposal that all transactions should only be entered into by registered documents.

79. We agree that the discharge of obligations created by registered document should be by registered document *with a nominal fee.*

80. We do not agree to the general proposition underlying the question. It is likely to create a serious deadlock in human affairs.

81. The practice of *Benami* transactions has been long prevalent in India and we cannot agree to the proposal to disturb it.

82. We do not think the enhancement of court fees would materially serve to check frivolous suits. It may possibly penalise innocent people having *bonâ fide* claims.

83. We think that the rule requiring the execution of mortgage deeds to be attested by two witnesses simultaneously is too rigorous and requires to be relaxed as it either promotes perjury or works injustice. Hence it is not necessary to retain it. There should be no difference between mortgage deeds and sale deeds and lease deed of equal value.

84. In view of the poverty and illiteracy of the masses in this country no remedial measures suggest themselves to us to prevent it except a suitable provision in section 23 of the Contract Act against such contracts.

85. We do not approve of the suggestion to empower the courts to refer cases to a referee, of their own initiative.

86. We do not think so.

87. No. We do not think so.

Oral evidence of Messrs. HIRA LAL DESAIBHAI, MULCHAND ASHARAM and Rai Bahadur GIRDHARI LAL, Representatives of the Ahmedabad Bar Association, called and examined on Friday, the 29th August 1924.

Chairman.—Q. I thank you for the very careful statement submitted by your Bar Association and I hope when you go back you will convey our thanks to them.

A. There is one correction to be made. In Question 15 there are two parts and there has been some omission. The answer is " no " but it is " no " to the former and as regards the latter part : " Is there any objection to suits to enforce simple mortgages by the sale of the mortgaged property as also suits relating to partnership with small capital being dealt with by these courts", about that we have an objection.

Q. The questions in the questionnaire were set by this Committee. That was the first thing we did. Then we went through great many of the opinions attached to the resolution in answer to the Government of India's letter to the local Governments and then we added certain other things that we thought of, but I gather that in the opinion of your Bar most of those things do not come to very much. Apart from the suggestions made by your Bar, do you suggest anything else. I mean what recommendations do you think this Committee might usefully make on important points. Let us take first of all the question of ordinary procedure of the trial that is dealt with in certain parts of the questionnaire. In what respect do you think that one may seek to effect an improvement ? For instance take the settlement of issues. Is that always done satisfactorily ?

A. No, the procedure provided for is not followed in the spirit. A party is called in a formal way and the judge simply asks some questions and satisfies

the form provided by the procedure and then asks the parties if they can suggest any issues and if they have nothing to suggest he frames some issues.

Q. You think that a more determined effort should be made to boil the thing down to the real point ?

A. Yes.

Q. In that connection do you think that more use can be made of the power of the judge to examine the parties not as a part of the trial but to find out their case.

A. Yes.

Q. I take it that at the settlement of issues you would like to have more attention paid to the question of admission of documents ?

A. Yes.

Q. At the time of the settlement of issues—I take it—that very often both the pleaders and the parties have not had time to go to the root of their own case ?

A. That is what happens.

Q. Then of course very often a written statement is filed and issues are settled immediately after with the result that the parties do not get very much time to apply their minds.

A. We just want to make some correction in this. The practice is that after a written statement is filed a date is given for the purpose of putting in of the documentary evidence by both the sides. Then a date is fixed for the admission of those documents. Now, at that time only parties are left to admit or not to admit but the judge does not apply his mind to see whether the refusal to admit is a frivolous one in order to protract the trial or whether it is a real one. It is after that date that a date for the settlement of issues is fixed when parties are asked to be present and at that time some times they are examined and some times they are not. Even when they are examined, the examination is formal.

Q. That is rather interesting because apparently there is a more careful practice in the Ahmedabad District than elsewhere. Under the Code the written statement is to be filed on the first date of hearing and then the court proceeds straightaway to the framing of issues. I gather from what you told me that what happens is that after the written statement is filed an adjournment is given to go into the question of documents and when that has been dealt with issues are framed, so that when the case comes on for the settlement of issues before the court it comes on after 2 or 3 hearings ?

A. Yes.

Q. That being so you ought to be better than many other people ?

A. Yes.

Q. As regards the people who refused to admit documents unreasonably which they afterwards practically admit, is any use made of the powers to order a particular party to bear the costs of the successful party?

A. Even if they make use of these powers the costs are so small and insignificant that the parties never care for them. In Ahmedabad parties are rich enough to bear the costs and they never care for these things.

Q. Of course it is difficult to make a man admit when he does not want to admit, but can you suggest any change that would help in the matter.

A. The only change that we can suggest is that the judge should take care to see whether the statements given with reference to the admission of documents are *bonâ fide* or whether they are evasive.

Q. The parties being there, one can ask them " why do you deny this and why don't you admit this ?"

A. Yes, that is what happens. After the written statement other documents are put in when it becomes necessary to do so.

Q. Our present Code does not seem quite satisfactorily to provide all about that. It asks the plaintiff to bring his documents on which he relies and the list,

and then it provides for a summons to the defendant asking him to bring all the documents, but there does not seem to be a reasonable provision that so many days after the settlement of issues, the parties should lodge their documents ?

A. But in practice it happens that the parties either apply or the court gives fifteen days or a month, after the settlement of issues, within which documents should be put in.

Q. In practice, I take it, that documents are very seldom rejected at the time of trial, because they have not been produced in time ?

A. It all depends upon the discretion of the judge. If the judge is very strict the party must produce all the documents within due time after the settlement of issues.

Q. Of course it also depends, to some extent, upon what the document is. If the party produces an unsuspicious registered document even at the last moment, rather than deciding contrary to the truth, the judge will let it in.

A. We have come across judges who would not allow even then to be admitted. There is a difficulty about certified copies, with regard to which the rules should not be very strict. What happens is that when a defendant goes to the pleader he is not able to tell him all that had happened previously and eventually a document, which is very important, is found in the previous proceedings of the pleader or the record of the court, and that sometimes is not admitted at a late stage.

Q. You cannot have rigid rules ?

A. Particularly with regard to certified copies.

Q. Of course the only way by which you can compel the parties to be reasonably in time will be to arm the judge with the power, if he thought that the party was unreasonably denying a thing, to require him to give security for the costs. Do you think that such a provision would be regarded as strong, or do you think that such a provision would work fairly well and would be useful ?

A. In my opinion it will be useful.

Q. As regards pleadings, when people have got a certain amount of practice at the Bar. I take it, they are able to draw the pleadings more or less properly, but do you find that people who come to the Bar, for the first two or three years do not seem to have any facility for proper training in the art of drawing pleadings, framing interrogatories, and all that sort of thing ?

A. They require training.

Q. Could anything be done, without being unduly hard upon youngmen, to require them, when they come to the Bar, to get some sort of training ? I do not mean to teach them more law, but to teach them how to apply it.

A. I believe in England the practice is that the junior ought to be under a senior for some time. In the same way if those who enter the Bar are required for some time to be under some seniors, and seniors also are compelled to take juniors with them, according to their practice, then I think it would be a better system. Judges are required to have some training before they take up judicial duties and in the same way the members of the Bar, before they enter on actual professional duty, ought to have some training.

Q. Would there be enough seniors to take juniors ? Would it be workable ?

A. There would be some practical difficulties because there are some people who enter the Bar for the purpose of satisfying the three years' period rule for qualifying themselves to become a subordinate judge. But if the qualifying period, as we have suggested is raised from three to five years and the age-limit is raised to 35, and the junior is required to serve for the first two years with the senior pleaders, then I think there would be no practical difficulty. At least, as far as the Ahmedabad Bar is concerned, the number of juniors is more than the number of seniors.

Q. Would it be unreasonable to say that after a year or two, the pleader's licence should not be renewed unless he passed some sort of examination in matters such as pleadings, drafting, procedure, etc.; I do not mean to say that you should refuse

to allow him to practise, but after he has been in practice for two years, he should be required to pass some sort of examination. In other words, in his first two years, he should have the feeling that there is a certain training he has to get ?

A. I think that such a provision would not work hardship.

Q. Would you prefer that to having some practical paper in the B.A., LL.B. examination ? I think a practical examination, in which papers are worked out by a judge or a senior member of the Bar, would be better than the university examination ?

A. Yes. I have come across cases where people, when they came to the Bar were advised to work in an attorney's office, and ultimately they turned out to be much better.

Q. They see how the machine works.

A. At present what happens is that when a junior pleader comes to the Bar, he engages a clerk and very often in the beginning he has to depend upon the clerk for the drafting of plaints, etc. The result is that there are mistakes and the junior pleader himself falls into some pit-falls.

Q. You were mentioning that in the case of people who are appointed as subordinate judges for the first time, you prefer five years to three. That will be an improvement distinctly, but the only thing is that if you are going to raise the age-limit, you have to either increase the salary or enable the pension to be earned in a shorter period ?

A. I think a provision should be added that they should earn their pension in a shorter period. I will give them half pension even if they end their service at 55.

Dr. DeSouza.—Q. You would be in favour of the Madras rule which provides that if a man is appointed after 30 years, 5 years spent by him in the profession, should be treated as service towards pension, so that 25 years actual service will qualify him for full pension?

A. Yes. That will be a wholesome rule.

Q. With regard to your suggestion as to the holding of an examination for pleaders at the end of 2 or 3 years before their sanad is renewed, do you think there will be sufficient facilities in Ahmedabad and the seniors would willingly undertake to train them ?

A. Yes.

Q. How many members of the Bar are there now ?

A. 150.

Q. Are there not ten new admissions every year ? Do you think there will be a sufficient number of senior men to give them actual training ?

A. If there is a moral duty laid upon the seniors that the juniors would have their sanads renewed only in the event of their getting a certificate from them, there will be no difficulty. That would be good in another way also. It will instil a sense of discipline and that deference to the senior members of the Bar which is absolutely necessary for the purpose of keeping the tone of the Bar as well as for various other considerations. There is one other point. The junior members of the Bar who enter the profession have to maintain themselves. They can't get civil work. They very often have to move about in the criminal courts in the early days of their career. If a provision of this sort is introduced, they would be in touch with the atmosphere of civil courts.

Chairman.—Q. There would be no great difficulty, I should think in getting senior members of the Bar appointed by your Association to give a few lectures on practical points to such people. I mean one senior member of the Bar may be asked to do it for one year and another man next year and so on. They will give lectures on drafting, pleadings, discovery, about advocacy and all sorts of practical points. I mean each local Bar might be encouraged to do its best for the junior members. Don't you think it could be done ?

A. Yes.

Q. In a great many places at any rate in this province you think the Bar Associations would respond to it and make it a success?

A. Yes.

Q. As regards the question of execution which is a very important matter, we will just exchange a few ideas. I see you are in favour of abolishing article 182?

A. Yes.

Q. Now, that seems a feasible proposal. If the decree is passed *ex parte* and the first application for execution was not made a good many years after the decree was pssed, then no doubt questions as to the service of summons in the suit would be raised. I mean if you allow the decree to be executed at any time within 12 years would it not be necessary to put some sort of limit to that? Would it not be necessary to insist that the judgment-creditor should have done something within the first one or two years after getting the decree?

A. I will suggest that a provision may be made to see that the plaintiff takes out execution within three years after decree and due notice is served on the judgment-debtor.

Q. You will make him not only take out execution but also serve him with notice.

A. Yes.

Q. Won't it be better to say that an *ex parte* decree, in any case, would be kept alive for 6 years and if the judgment creditor did his best to get served a notice on the judgment-debtor either within one or three years after the passing of the decree, then he should have 12 years?

A. Yes.

Q. Speaking for myself I think something like that might have to be done in the case of *ex parte* decrees.

A. Yes.

Q. At present when execution is started we issue a notice to the judgment-debtor. In fact during the course of execution proceedings we have to give him many notices, but is there any reason why he should get any more notice than the first notice sent to him that execution proceedings have been started? Why should he get a notice for sale proclamation and several other notices? Can you not make the execution proceedings just like a suit in this respect that if a man gets one notice it is up to him to find out what is going to be done or what further steps are going to be taken by going to the office and enquiring from a clerk, *i.e.*, what is going to be done in the next week and so on.

A. There would be no objection to that so far as towns are concerned but there will be some objection with regard to village people. It happens like this. Execution proceedings, after the property is attached, stop short till the objection to attachment is disposed of. Supposing the attachment continues then the person who laid a claim to the attached property, would be filing a suit under rule 58, Order 21, and then he would apply for the execution proceedings being stayed till the suit is decided. The execution proceedings are thus stopped or stayed till the appellate court passes a decree. Now the judgment-debtor during all these proceedings has nothing to do because the fight is between the decree-holder on the one hand and the claimant to the attached property on the other and some times a year or two years elapse and then execution proceedings are renewed, if the judgment-creditor succeeds in showing that the attached property was really the property of the judgment-debtor. Now if the judgment-debtor does not get a notice how can he know that the proceedings are going on. He must get a notice.

Q. When he knows that execution has been launched against him, can he not keep himself informed of what follows afterwards? Why should the poor judgment-creditor be obliged to serve him every now and then?

A. Yes.

Mr. Justice Stuart.—*Q.* Why do you want to protect the interests of such a judgment-debtor ? When the property has been ordered to be sold and a man puts in a false claim that it is his property, and it is found that it is the property of the judgment-debtor, why should it not be sold ?

A. The property is ordered to be sold only after these suits are disposed of.

Q. I know that, but when it has been found that it is the property of the judgment-debtor, why is it necessary to give him fresh notice ? Why should you not proceed with the sale ? Take the ordinary case of a house belonging to the judgment-debtor. A notice is issued to the judgment-debtor, and the property is put up for sale. The judgment-debtor's brother-in-law, or his cousin or nephew or a complete stranger comes forward and says that it is his house and not the judgment-debtor's, and a case is brought. When it is found that the house belongs to the judgment-debtor, why should not the sale be proceeded with at once ? Why should you give him a notice ?

A. There is really no reason.

Chairman.—*Q.* What happens at present is this. The judgment-debtor does not come for getting the terms of the sale proclamation settled but when the sale has taken place, he files an application to set aside the sale on account of inadequate price. Would it not be reasonable to say to the man " if you want to take part in the settlement of the terms of the sale proclamation, you must come in yourself at the proper time and if you do not come and keep away you would not be allowed to come in afterwards and get it set aside "? If there is nothing wrong in it, would there be any hardship ?

A. If he is represented by the pleader, then there would be no hardship, otherwise he will not be able to understand how the terms are settled.

Mr. Justice Stuart.—*Q.* When the judgment-debtor owes the judgment-creditor money which he has contumaciously refused to pay I have never been able to understand, why every thing is done for the man in the wrong and nothing for the man in the right. As regards the sale proclamation, why should he get a notice about that ?

A. Otherwise the property will be sold at a low price.

Q. How can that be so ? Suppose there is a house which is worth Rs. 200. The judgment creditor may say that it is worth Rs. 50 and the judgment-debtor will say it is worth Rs. 2,000. No genuine bidder will pay any attention to either statement. Does he not make his own valuation and bid accordingly ?

A. The difficulty is that the auction purchaser will value the house at a lower price because he takes it that he will have to fight out some sort of litigation in future. He is not certain whether all the incumbrancers know all about the execution proceedings ; some of them may not have come forward to the court to have it informed of their incumbrances ; or some incumbrancer may come forward afterwards and say that he had a registered mortgage with regard to the property in question. If a notice is given to the judgment-debtor of the sale, as he is interested, he will try to see that the property fetches as much price as possible and of course he would bring forward a man who will purchase the property at a very high price. The trouble with regard to court auctions is that they are not made public and generally people do not go there to bid.

Mr. Justice Stuart.—*Q.* Is not the remedy to have the sale conducted in a business like manner ?

A. Yes.

Chairman.—*Q.* Would you mind telling me one thing. When a property—let us say out in a village—is ordered to be sold, how exactly is the sale conducted ? Does some body go to the spot to conduct the sale ?

A. If the property is a house in the town the sale is conducted at the spot but if it is a land outside, then the sale is conducted at the Chaura and not at the place where the land is.

Q. And the court selling the property is situated some where else ?

A. Yes sometimes 10, sometimes 15 and sometimes 20 miles away from the property.

Q. Who goes to the spot ? Is a clerk sent by the court to conduct the sale ?

A. Generally a bailiff.

Q. Not even the nazir of the court ?

A. No.

Mr. Justice Stuart.—Q. By bailiff do you mean a process-server ?

A. Yes.

Q. That is the first difficulty. A low paid menial goes out to conduct the sale of a big property ?

A. Yes. Such a low paid man goes and this gives rise to many contentions.

Q. Can the judgment-debtor easily bribe such a man with Rs. 2 ?

A. Yes.

Q. That is the first mistake ?

A. Yes.

Chairman.—Q. When this man goes to conduct the sale what does he do ? All he does is to receive certain bids ?

A. He is practically the man going about in the village or town and saying that the sale of such and such property is going to take place. It is advertised in this way and at the time of the auction people collect and bids are made.

Q. He takes those bids, and then what does he do ?

A. He reports those bids to the nazir.

Q. Not to the court ?

A. To the court but through the nazir.

Mr. Justice Stuart.—Q. Is it not the case that even in the absence of a proclamation and in the absence of the village menial going about the village beating a drum and shouting that such and such property is going to be sold, the village people know about this sale weeks before in the course of conversation at the village meeting place or elsewhere so that a man who wants to buy the property has had every opportunity of making up his mind. If so, is it a bad method to sell the property in the village ?

A. It is not a bad method.

Dr. DeSouza.—Q. Is it not a fact that the sales of all revenue paying lands are conducted not by the court but by the Collector so that all this method is not followed by the courts but by the Collector as all lands are sold through him ?

A. Yes.

Q. Only houses are sold by the court itself ?

A. Yes.

Mr. Justice Stuart.—Q. How do you sell groves ?

A. Those are also sold through the Collector.

Dr. DeSouza.—Q. At the same time all partitions of immovable properties are done by the Collector.

A. Yes.

Q. Would you like to tell the Committee anything about this? Have you any difficulty as regards this or not ?

A. It is a very unsatisfactory business conducted by the clerks under the signatures of the superior officers. This work is done by petty clerks who are subject to very little check. It is done by a circle inspector who is a low paid officer and he does the whole thing in this connection.

Chairman.—*Q.* Is it done by letting the land or mortgaging it? How is it done?

A. By letting the land or mortgaging it, whichever is more valuable from the point of view of executing the decree. Sometimes they mortgage a property for a certain period for a lump sum of fifty thousand rupees. The mortgagee enjoys the income and at the end of that period returns the property.

Mr. Justice Stuart.—*Q.* That is a lease with the lease money paid in advance?

A. We call it a mortgage.

Q. But there is no question of redemption? Do you consider that there is any advantage in handing over this matter to the Collector? Is not the transaction conducted by his office? If you ask the Collector "how many decrees have you executed," he can never answer. But then, on the other side, there is the argument that if you alter the system, you are doing much damage to the agriculturist judgment-debtor. The argument is that his interests will be better looked after by the Collector than if left in the hands of a subordinate judge. What are your views?

A. There is not the slightest foundation for the suggestion that the judgment-debtor wants help. It is the judgment-debtor, who is more influential than the judgment-creditor.

Q. There is no reason why an intelligent subordinate judge should not be able to do just as well in the matter as the revenue officer does?

A. Certainly.

Chairman.—*Q.* Do you think that he can find a mortgagee or a lessee in certain cases?

A. The judgment-debtor will be asked to suggest.

Q. Do you think that a subordinate judge sitting at the sudder would be able to get them, apart from the judgment-debtor making any enquiry? Would he be able to lease the property in the same way as the Collector can do on the spot?

A. The subordinate judge and the Collector are both in the same "taluqa," and I think that both of them are on the same level. The only difference is that the revenue department has got its own staff which the subordinate judge has not. That is the only thing, but very often the subordinate staff of the revenue department works mischief.

Mr. Justice Stuart.—*Q.* But ordinarily speaking would not the judgment-debtor be the best man to suggest a possible lessee?

A. He is.

Dr. DeSouza.—*Q.* You must have had a large number of decrees executed by the sale of immovable property, by the Collector. Do you know cases in which the Collector has made use of his power of saving the land by leasing it?

A. One in a hundred cases.

Q. But do you know any in your place?

A. I know only three instances.

Q. Then your general opinion is to transfer the decree, to be executed against a property, to the subordinate judge, provided he is given a better machinery of executing it?

A. Yes, and in centres like Ahmedabad I would like to have a special judge looking after all execution matters.

Chairman.—*Q.* You will like to have a separate execution court?

A. In large centres.

Q. As far as Ahmedabad is concerned, has there been any decentralisation?

A. There is going to be a decentralisation there. Ahmedabad is made of three districts and the Government have selected a piece of land, where they are going to have separate courts for the two other districts. But the district of Ahmedabad

is daily increasing in commercial importance so that the burden of work will not be appreciably less.

Q. You now have ten courts, and if not ten, you will have seven or eight courts at least ?

A. Yes.

As regards the last question I have to bring it to the notice of the Committee, that last year the Government invited opinions whether the execution proceedings should be transferred from the Collector's department to the civil court, but I do not know what has become of that. The Collectors and the subordinate judges were also asked to give their opinions.

Dr. DeSouza.—Q. Did you get this paper from the High Court or was it from the Government ?

A. From the Government, and the subordinate judges had given their opinion that they should not be transferred to them, and they pointed out the difficulties which we have stated to you.

Chairman.—Q. Then the matter is being considered by the local Government and will be brought in due course before the Legislative Council. But what I mean is that supposing you have a separate execution court for Ahmedabad, would there be enough work for a single judge ?

A. I think that the insolvency work, execution work, and the work of looking after minors' estates, combined together would be sufficient for him.

Q. You had a system, some time ago, of a registrar ?

A. Yes.

Q. Do you not think that in a place like Ahmedabad, where there is a great deal of work, you may have a system by which one office should serve all courts, and a registrar, who will be of the standing of a second class subordinate judge, to do nothing except to look after the office work, like execution work, and the minors' estates and separate out the *ex parte* cases from the other cases, so as to give the judges a clean run on their lists of contested cases ?

A. I would like to say that the registrar, who was appointed, only looked to the district court work, and the filing of plaints and all that sort of work was done in the court of the first class subordinate judge. I do not think that he could attend to that work.

Q. The registrar system, I understand, was abolished because it was considered that the registrar had not sufficient work to do. What I was going to suggest for your opinion was rather a different system. I do not want this registrar to be a mere personal assistant to the district judge, but the registrar, under this system that I am putting to you, is a mere consequence of having one office instead of having ten courts and each court having a little office of its own, with a clerk to receive plaints, and another clerk to attend to execution work. I want to see one office, just as the High Court has here, with a competent judicial officer at the head of it, and there should be separate departments, one place where you can file all plaints which will ultimately be sent to the proper courts, and another place where execution work will be attended to and all these sorts of things. The idea is to have a unified office serving all the courts, and in charge of a registrar who will look after a lot of work which is now done by the district judge himself. What is your opinion as regards that ?

A. For the subordinate judges' courts there is only one court in which all the plaints are filed. All suits for the subordinate judges' courts are instituted in the court of first class subordinate judge, and then they are distributed among other subordinate judges according to jurisdiction.

Q. What about the *darkhast* work ?

A. It is also filed in the 1st class subordinate judge's court.

Q. Then you have got two offices.

A. Yes.

Q. Is there any reason why the district judge's office and the other office should not be pooled and amalgamated and put in charge of a responsible officer under the district judge or the 1st class sub judge, if you are going to have a registrar ?

A. I may say that such an arrangement might do only for a place like Ahmedabad. Secondly, there is one thing. In Ahmedabad the courts are all in one compound. Very often at other places one court is in one place and another court is in another place.

Mr. Justice Stuart.—Q. You may take it as a necessary proviso that in all place where the work is insufficient or where the inconveniences outweigh the conveninces it won't be introduced ?

A. That is enough.

Chairman.—Q. Throughout the Bombay Presidency are all institutions made in the court of the 1st class sub-judge whether the courts are scattered about or are in one place.

A. Yes. That is the practice. We have two 1st class subordinate judges and 3 joint 2nd class subordinate judges. According to the provisions of the Civil Procedure Code, a court has to maintain a register of suits and execution proceedings. Without a change in the procedure, for a place like Ahmedabad, some relaxation of that rule may be necessary.

Q. Probably a great deal could be done under the Civil Courts Act of each province.

A. Yes.

There is one other thing which I would wish to say. The difficulty is not so much as to where the institutions take place but when after the institution the work is distributed to several courts, the clashing of engagements which occur to the Bar is one of the factors.

Q. If this system were to be adopted, it would not be necessary as at present to send the case to begin with to a particular judge. I mean the registrar might be able to do certain amount of preliminary work himself. When the cases are ready for trial they may be sent to this judge or that judge.

A. We have to apply for interlocutory orders. We have to apply for a temporary injunction. The registrar who is a second class subordinate judge will have no jurisdiction. Then he will have to send the case for a special purpose. Along with the plaint we also present a petition for temporary injunction.

Dr. DeSouza.—Q. The suggestion is that all the preliminary spade work such as the issuing of process, etc., may be done in the registrar's office. The interllocutory matters will of course be disposed of by the judge ?

A. It may be done.

Chairman.—Q. About these *ex parte* injunctions, of course some injunctions have to be granted. But I think the rules are two. The first is that you should never grant an *ex parte* injunction if you could give short notice to the other side and bring him before you in 2 days. Another rule is you should never grant an *ex parte* injunction if it is quite manifest that the plaintiff might by exercising reasonable diligence have brought the parties before you long ago. The thing is that *ex parte* injunctions ought not to be granted except in cases where some thing has suddenly arisen within the last week of the application to compel the issue of an interim injunction before you can even serve the man with notice. But I understand you to say that *ex parte* injunctions in your part of the country are given for a couple of days pending notice to the other side.

A. Yes.

Q. In some parts of India if a person is entitled to an interlocutory injunction he always gets it *ex parte*.

A. Supposing ten days are fixed, the other party will come to court the next day and get it fixed for two days.

Q. That is very satisfactory.

A. Yes.

Dr. DeSouza.—Q. Has the complaint not been the other way, *i.e.*, the house-owner is waiting for the last day of the court, in the case of summer vacation or other vacation, and then opens a window or demolishes a wall ?

A. Such cases have happened. They always take advantage of it in summer vacation and one judge has always to be on the spot to attend to these matters.

Chairman.—Q. What about insolvency ? Is it working well in this presidency ?

A. It is not working satisfactorily.

Q. In Ahmedabad, how is the work done ? Do you appoint receivers in suits for the recovery of property ? Whom do you appoint ?

A. Here the practice has been to appoint a pleader as receiver. Formerly clerks were appointed. In our opinion more attention should be paid to suits for the recovery of property. They should be tried expeditiously.

Q. Well it is the business of the receiver and not of the court ? The position is that you require a very good receiver and not a very good court. The actual administration should be done by the receiver ?

A. A special receiver may be appointed for Ahmedabad and he may also do execution work. He may be called the official receiver.

Q. Would you do like this ? Instead of giving the receiverships to several members of the Bar, if you give them all to one gentleman who has got some experience of these matters, do you think it will lead to better results ? The man appointed should be a whole-time receiver and should devote the whole of his time to this work and do nothing else. In what way would you improve this work? People have tried this experiment in many ways. In some places receivers are paid by Government, in others they are official receivers but they are also allowed to do practice at the Bar and in other places they appoint special receivers for special cases ? What sort of receiver would you like ? What will be his commission ? How much commission, do you think, would be made ? Do you think the Government would stand to lose or would it gain ?

A. Government would not stand to lose if the official receiver is also invested with the duties of supervising minors' estates.

Q. That is quite a different thing ?

A. But he may not be fully occupied with this work.

Dr. DeSouza.—Q. The position is this. If the Government appoints a man as official receiver on Rs. 400, would the commission be so much as to compensate the Government for that ?

A. That depends upon the importance of the centre.

Mr. Gupte.—Q. Would you like the system of guaranteeing him a minimum salary, *i.e.*, Rs. 500 a month and if he gets more that will be his luck ? Will that not be an inducement for him ?

A. That is a better arrangement. I think that would be a better system than giving him a fixed salary for the month.

Chairman.—Q. The chief point is that he will not be given any other work to do. He will be wholly and solely engaged in this work ?

A. Yes, he will be a whole-time receiver.

Q. Are there any improvements or changes that you would like to make in the Provincial Insolvency Act ?

A. At present many persons get the benefit of the Insolvency Act very easily. In reality they have got property but they conceal it and live on the money of others. They lead a profligate life on borrowed money and they have eventually to apply for insolvency. There should be some check on these persons. If persons, who have really lost in business get benefit of the Insolvency Act, there is no harm, but there are some persons who conceal their own property and then apply for insolvency.

Q. At the time of the insolvency petition, you cannot tell whether he has concealed his property or he has really lost in business ?

A. It is a general matter of public knowledge. Whenever a man files an insolvency petition, people say what has he done with his property.

Q. Then how would you improve it ? Do you think that he should be refused adjudication in such cases ? Do you think that the court should be very strict ?

A. Yes.

Q. Supposing you do not adjudicate him as an insolvent, the judgment-creditor can send him to jail for six months.

A. I think freedom from being sent to jail is one of the points which make people apply for insolvency. If he is sent to jail, that will be a sufficient check, a salutary check. There is one other point. On the first day there are lots of creditors, but the insolvent gets an *interim* order immediately and then of course the final order takes some two or three years and by that time those persons who took very great interest at the first hearing forget all about it and they slacken their activities. When proceedings are once started, special attention should be paid to them.

Dr. DeSouza.—Q. With whom does the fault lie ? Does it lie with the court or with the receiver ?

A. I think in both combined. The court generally devotes Saturdays—even then only half of them—to insolvency work and if a special officer be appointed to attend to this work then the proceedings will be prompt and promptness is the gist of a case ; and if the receiver can give his whole time to this work, we think the matters will improve.

Dr. DeSouza.—Q. I take it that you are strongly in favour of having a whole-time receiver who should do no other work.

A. Yes. If he has not sufficient work he may be entrusted with some other work such as execution or something like that.

Mr. Justice Stuart.—Q. Now I want to take you to another peculiar provision of law in Bombay which is that all suits in which the Secretary of State is a party must be heard by the district judge. I suppose you are aware that only in Bombay this method is followed and nowhere else in India. Is that not so ?

A. Yes.

Q. Do you see any advantage in this ?

A. The advantage is this that generally people believe that where the Government is concerned in a suit or where institutions like municipalities, local boards, etc., run by the Collector or the institutions in which the Government or its officers are interested, in such cases, people believe—I think rightly—that the district judge would be able to and does dispense better justice than the subordinate judges because a subordinate judge is often reported about in such cases and transferred and their promotion and future prospects are blocked by the Government. Under these circumstances people rightly believe that in cases where Government or the Collector is interested they get better justice on account of the independence of the district judge.

Q. Do you not consider that that view is an unjustified slur both on the Government and the subordinate judges ?

A. No.

Q. Why should the subordinate judges in Bombay be less trustworthy than subordinate judges in the remainder of India where they are entrusted with this sort of work ?

A. I think subordinate judges everywhere have the same attitude of mind and have some fear.

Q. At any rate you consider that the holding of this opinion rightly or wrongly is a sufficient reason for blocking the work of the district judges ?

A. No, it is not blocking ; the district judge is expected to give better decision in the cases where Government is a party.

Q. Is it not blocking ? I understand from Dr. DeSouza that when he arrived at Ahmedabad there were more than two hundred such suits and that he cleared off these suits by stopping his other work. Is that not blocking ? What do you think of this proposal. Would it not be sufficient to add a clause that the district judges should be given the power to transfer these suits to the subordinate judges.

A. We would not agree to that proposal.

Q. You have got sufficient confidence in a district judge as regards the trial of a suit but you have not got confidence on him as regards the transfer of that very suit ?

A. We are not in favour of giving him that power.

Q. Do you think that this difficulty will be surmounted if the power of transfer of the subordinate judges be left in the hands of the High Court and not with the Government.

A. The High Court is sometimes consulted as regards these matters.

Mr. Gupte.—Q. No, what Mr. Justice Stuart means is this that the transfer of the subordinate judges should be made direct by the High Court, and if the Government has nothing to do with them, then the difficulty will be over and the subordinate judiciary will be entirely independent.

A. If that is done much of the difficulty will be over.

Mr. Justice Stuart.—Q. Is there any reason why the position of a subordinate judge should not be considered as independent as that of the district judge ?

A. The district judge is an I.C.S. officer, after all.

Q. From what I have seen from the work of your subordinate judges I should say that your subordinate judges are in no way less reliable and intelligent than those of the other provinces and I have to tell you that a munsif in my province getting Rs. 400 decides suits in which Government is a party and he decides those suits just as he decides the suits of anybody else. He is quite impartial. I do not suggest that our courts are better in any way than yours. Will you be ready to try the experiment ?

A. There was a bill in the Bombay Legislative Council and then I was also in the Council. There was an amendment moved by an elected member from Sind, but the Government opposed the amendment and even some of us also opposed the amendment, and leave was not ultimately given to introduce it.

Q. I may take it that public opinion in the Bombay Presidency is against the proposal. Now, with regard to some other matters, I have been through about fifteen suits from Ahmedabad. Some of them are from first class subordinate judges and some from second class subordinate judges. I will give you some particulars and I want to know what remedy you would suggest for them. The first suit was to recover money advanced. It was in the court of a first class subordinate judge and to my mind it was a suit of no difficulty. It was instituted on 14th March 1917, the evidence did not commence until 1st March 1920, and it was decided on 7th July 1920. For three years that man had to wait for the decree ; what remedy do you suggest there ?

A. Of course it is a delay which is fit to be commented upon.

Q. What do you suppose was the cause ?

A. The work is very heavy and all that we can suggest is that, so far as Ahmedabad is concerned, the recruitment should be on a different basis, for Ahmedabad is a commercial centre. It also depends upon the judge and I may say that things might be expedited if the first class subordinate judge attends only to cases under his special jurisdiction. At present he decides second class jurisdiction cases also in order to show a large amount of work in returns submitted to the High Court.

Q. The next question I come to is the question of appeal. The suggestion is to have benches of two first class subordinate judges, to hear appeals up to one thousand rupees, their findings to be final even on law, with a right to state a case in matters of real difficulty to the High Court, and with a right of appeal against their decisions, if they disagree. What do you think of that scheme ?

A. I think that people have great confidence in the High Court. Very often they think that the decision of the High Court on law points may be such as may not appeal to the subordinate judges.

Q. You know, of course, the number of cases in which the finding of the subordinate judge is found to be right by the High Court. When you find an average subordinate judge being usually held to be right, you will find selected qualified first class subordinate judges even better. The main point is the terrible length of time taken in getting appeals heard. If you have these benches, who will deal with nothing but appeals, you will get appeals heard far more quickly. I will give you a few figures to show how long you take, at present, to decide second appeals. First case decided on 23rd March 1916, appeal decided by the district court on 12th November 1918, *i.e.*, after two and a half years. Second case, decided by the lower court on 3rd February 1917, decided by the district court on 26th February 1920, *i.e.*, three years. I do not know whether you, gentlemen, always look to these dates to see how long it takes to decide these appeals. There is another case. It was a partition of a little piece of waste land, measuring 467 square yards, and there were 235 defendants. It was decided on 6th March 1916, and the appeal was decided on 23rd March 1920 ?

A. That might have happened because some of the defendants had died.

Q. I have got here a case on a promissiory note. It was decided by the lower court on 23rd March 1918, and on appeal by the district court on 13th April 1920. That is the best that you have got, *i.e.*, only two years. Do not you think that even at the expense of public sentiment we might do something to give a man his chance to have his appeal heard in three months, instead of keeping him waiting for two years.

A. But the amount of one thousand rupees in money suits is quite different from what it is in other suits.

Q. Here is another case, which took from 15th November 1918 to 4th July 1921. This was to obtain a right of way over a little passage 6 feet wide and also to obtain the closure of a drain. The valuation was Rs. 25. It has taken 3 years.

A. That is true. But people will value the case much more in order to retain the right of appeal to the High Court.

Q. Then, should they not pay more court fees ? What I want to point out is the value of the opinion of the High Court on a point of law. Under the present system a large number of people die before that opinion is given. Now, I suggest to you that you would still get decisions upon cases stated for opinion ?

A. Then there should be liberty for the party to move the court and ask the court to state a case.

Q. Can you not leave that to the good sense of the selected subordinate judge ?

A. Supposing the selected subordinate judge refuses to do so ?

Q. Can you not trust your subordinate judges to arrive at a reasonably sensible view ?

A. It is not a question of trust. It is a question of difference of opinion.

Q. At any rate what is your opinion about that ? Which way do you say the advantages lie ?

A. I won't like to disturb the present arrangement.

Dr. DeSouza.—*Q.* Will you please explain the nature of the commercial litigation in Ahmedabad ?

A. Having regard to the growth of business in Ahmedabad we get cases of contracts made with English firms, and also important company litigation. There are various kinds of commercial litigation and they are growing in Ahmedabad a great deal. So far as the personnel of the Ahmedabad judiciary is concerned, it should be put on a different basis.

Chairman.—*Q.* What do you want to be done ? Do you want a barrister from the Original Side to be made a subordinate judge or somebody trained in commercial work ? Do you want somebody with experience in commercial work ?

A. Yes, trained in company law and commercial matters. We have much business with England and foreign countries and breaches of contracts occur.

Mr. Gupte.—I suppose there are very many companies in Ahmedabad.

A. There are more than 100.

Q. You seem not to be inclined to extend the provisions of Order XXXVII as regards summary procedure. Having regard to commercial activities, would it not be desirable to some extent that the summary procedure should be introduced ? I mean in cases of suits on promissory notes, " kattas " and fer liquidated claims.

A. We have expressed our opinion on that point. We are still in the mofussil and the public in Ahmedabad are not so intelligent as in Bombay . We have known cases in which they do not give us even proper instructions.

Q. There is a large mercantile community in Ahmedabad. Would it not be desirable to extend the summary procedure at least as regards dealings between your merchants in Ahmedabad ?

A. We have considered that question and we think that if the judges work with a full sense of their duty there is no necessity for creating dissatisfaction by applying that rule.

Q. There is one advantage which you might consider. If that procedure is introduced along with a provision for the modification of court fees in suits upon summary procedure, the costs of the litigant would be very small. You can get a decree for 2 lakhs of rupees at a cost of Rs. 200. I suppose now the scale of fees for pleaders and court fees is the same whether you got an *ex parte* decree or not. In a city like Ahmedabad would that not be a great facility for merchants to obtain decrees on negotiable instruments or on matters of loans ? I think you will have no objection if provision for the modification of the court fees and the pleaders' fee, according to the amount of work required, is made.

A. Then, within certain limits, if that rule is introduced, there will be no harm. It should be confined to a particular class of litigation. If you do that and if you also add a rule like section 73 of the Presidency Small Cause Courts Act, it may be introduced within certain limits.

Witness continued.

There is only one point which I would like to say with reference to the question about justice being made economical. Our High Court has increased the process fees to such an inordinate extent that from that standpoint there is a grievance. When there was a case against one defendant, originally the process fee charged was 4 as. and for every additional defendant 2 as. For a suit from Rs. 25 to 50 they have raised it to 1½ times, for a suit from 50 to 250, 3 times ; for a suit from 500 to 1,000, six times and for every 1,000 it has been practically raised two times. For a special jurisdiction suit they charge Rs. 5 for one defendant and Rs. 2-8-0 for every additional defendant in the place of Re. 1 and 8 as. respectively. For every warrant of arrest formerly it was Rs. 2 and now it is Rs. 10. Even in cases of appeals it has practically been raised twice over. To charge such heavy fees, where the provision to serve the processes through post is largely resorted to and where the cost of sending the process through post costs only 4 as. is really very hard upon people and particularly when there are delays on account of the judge being

overworked: When 3 or 4 cases are set down for hearing, one is taken up and the rest have to be adjourned. In such cases the parties have to bear, unnecessarily, a large amount of costs.

Another point is that, when there are compromises, some refund of court fees should be made.

Mr. H. C. B. MITCHELL, Administrator General of Bombay.

Written Statement.

I am Administrator General of Bombay.

As such I have to take out numerous grants of probate and letters of administration.

I have looked up my cases for the 2 years ending with 30th June 1924 with a view to ascertaining the time required to obtain a grant from the High Court.

I find that in the 2 years I obtained 40 grants of simple letters of administration in which no question was raised by the testamentary registrar.

The average period between the lodging of the petition and the issue of the grant in these cases was *39·6 days*. In the same 2 years I obtained 19 grants in will cases in which no objection was raised by the testamentary registrar.

The average period between the lodging of the petition and the issue of the grant in these cases was *58 days*. This period in either will or simple letters of administration cases in Somerset House, London is four days *only*. The delay in Bombay is I understand due to difference in practice and congestion of work.

As regards congestion of work, I have to suggest that the pecuniary limit up to which the Administrator General can grant certificates under sections 31 and 32 of his Act should be advanced from Rs. 1,000 to say Rs. 5,000.

This would relieve the Testamentary Registrar's Office, and the simplicity of the practice in the Administrator General's office would afford facility to the public in obtaining grants in the smaller estates.

As regards practice—I suggest that in will cases the copy of the will and of the translation (if any) should be made by the applicant as in England instead of by the Testamentary Registrar's office. This would relieve the office of the copying work and only comparison of the copy with the original would be necessary.

I have also to suggest that section 22 of the Administrator General's Act should be amended so that instead of having to annex schedules of assets and debts to his petition he would merely have to state in his petition the probable value of the estate in a lump sum. This was the practice prior to the Act of 1913 and causes no loss of duty as the Administrator General has to account for and adjust duty on the final adjustment of the estate and would avoid not only the delay caused in checking the schedules in the Testamentary Registrar's office but also the delay caused by the Administrator General having to get the particulars (which must often at first be inaccurate) before applying for a grant.

Stamps.—The present system of stamped paper and adhesive stamps is out of date and causes great delay and inconvenience. This applies to both court fee and revenue stamps. There does not appear to be any point in writing the purchaser's names on stamps or issuing receipts for them. Impressing machines would save a great deal of time.

(Even the post office now recognises the use of franking machines.)

Mr. H. C. B. MITCHELL, Administrator General, Bombay, called and examined on Monday, the 1st September 1924.

Mr. Gupte.—*Q.* How long have you been Administrator General?

Mr. Mitchell.—*A.* Since 1919

Chairman.—I think you are also the registrar of companies.

A. Yes.

Mr. Gupte.—*Q.* Will you just give us an idea of the practice in your office ? I am not aware of it.

A. What happens, as a rule, is that the next-of-kins come along to my office and get an interview with one of the clerks who roughly drafts out for them an application that is necessary, that is a sort of affidavit which sets out the date of the death of the deceased, the property he left and a statement that the property does not exceed one thousand rupees. I have with me a form of a normal case where only the son applies. He has to swear before me. The certificate granted is only available for the property mentioned in the affidavit because then there can be no case of perjury. Some times there is difficulty because you have different cases, for instance, where there is a Hindu widow and a minor son, the minor son is entitled to get a certificate and his mother can only apply on his behalf. In such cases the widow goes to the High Court first and from there gets an order and I then grant her a certificate on behalf of the minor son insisting on a security bond, for the use and benefit of the minor.

Chairman.—*Q.* Is there any section under which that order is made or is it made under the general jurisdiction ?

A. There is no section.

Mr. Gupte.—*Q.* You suggest that the amount of one thousand up to which you are now authorised to grant certificates, should be raised to five thousand rupees. That is your suggestion.

A. Yes.

Q. Why ? Is there great delay in the office of the registrar ?

A. There is great delay in the office of the registrar. I have given you the average period, but I cannot say why there is so much delay in the testamentary registrar's office. They complain that the work is congested and that they want some relief. That is why I have suggested that my jurisdiction should be extended so as to relieve them of the simpler and smaller cases.

Q. Have you got adequate staff to deal with the additional work that you will be required to do. From the figures I find that there were 800 applications for grant of certificate in 1922 out of which 28 were contested ?

A. If my jurisdiction is increased I shall have to do double the amount of work, but my staff will be able to cope with it. I have obtained figures for estates which do not exceed Rs. 5,000 and the total number of grants is 240 ; that is purely a guess work ; I think I shall have to do double the amount of work but I have got sufficient and adequate staff to deal with it. I like to carry on the work as I am carrying on at present.

Q. Do you send an advertisement to the papers about the certificate ?

A. I advertise after the grant of certificate and that too in a few cases. That is my suggestion and I have suggested this increase only to give relief to the testamentary registrar's office. It will be a useful thing from the public point of view.

Q. Do you think your suggestion, if adopted, will give great relief ?

A. Yes, because my procedure is so much simpler.

Q. Is there any danger of the man getting a certificate for a small amount of property, while the deceased has left a lot of it ?

A. There is one additional advantage in my office. I always try to ascertain the exact value of the property and the amount must be mentioned in the affidavit which the next-of-kin files and he swears on oath that the property is only valued at Rs. 1,000. In the High Court that is not the case and the amount of the property is not mentioned. As the property must be mentioned, the grant cannot be obtained if that is not done.

Chairman.—*Q.* When the man puts in his affidavit has he got to swear on oath ?

A. Yes. I have prosecuted two cases of perjury up to this time.

Q. Is the form same, whether the application is for your certificate or for the certificate of the High Court ?

A. The form is somewhat different but the substance is the same.

Dr. DeSouza.—Q. Is there any enquiry made with regard to valuation for the purposes of duty to be paid to Government ?

A. I always check that in my own office. If it is a share or anything like that, one can ascertain the fact very easily from papers, because I always keep a list of quotations. If I am doubtful, I always get it ascertained through a broker.

Chairman.—Q. In connection with your duties as an official trustee, have you any matter to suggest in which you think this Committee can make any useful recommendation—I mean any special point ?

A. No, I think the Official Trustees Act works very well indeed and I do not think I have any suggestion to make so far as that is concerned.

Q. As regards the registration of companies have you anything to say ? I take it that the whole question of companies is rather a large one but have you any special point which you would like this Committee to consider or on which we can make any recommendation ?

A. In India we have the registrar of companies for each province and their jurisdiction too is equal in all provinces ; but unfortunately they do not agree in the interpretation of the law. This is more particularly as regards the foreign companies registered under section 277. For instance the Rangoon registrar gave a decision which to my mind was absolutely wrong and I had to tell the foreign company that the decision of the Rangoon registrar was wrong and then I got his decision referred to the High Court and there it was overruled. It would seem therefore desirable to have some method to decide such things in a uniform way whether by reference to the High Court or by making one registrar the head or something like it. I cannot suggest anything definite but I think it would be desirable to have some method of uniformity in the administration of the Act,

Q. Who is your immediate superior. I mean who is your official superior. Local Government or the Government of India ?

A. I believe I am under the Central Government but I am appointed and paid by the Local Government.

Q. Which department looks after your work ?

A. Revenue.

Q. For all the purposes ?

A. Yes.

Q. If there has to be a reference in a case of that sort *primâ facie* it would go to the Revenue Member.

A. Yes.

Q. He would be a sort of denominator ?

A. Yes.

Q. Are there many cases of that sort ? I mean points as to which difficulties arise in ordinary practice. Of course there will be some points of special difficulty and of special importance, but I want to know if you can give us any points about which you feel any difficulty in the course of your ordinary practice ?

A. The only cases I can think of are cases concerning the foreign companies registered under section 277.

Q. Would it be possible to have a short note from you on the subject just setting out the points on which you think there is some difference of opinion. I don't want you to make an exhaustive note but it should be a simple one ?

A. Yes. I can make such a note.

Q. Would it take very long ?

A. No.

Q. Please do so at your convenience and send the same to the secretary of this Committee and I hope there will be some arrangement to secure uniformity in practice.

A. Of course an amendment of the Act is, I think, out of your scope.

Q. It is and it is not.

A. There is one special thing and I will explain that to you, and then you can decide whether it is within your scope or not. A company has to submit its annual accounts—balance sheet—and I think some time-limit should be fixed within which the balance sheet should be put up before the company's general meeting and the registrar after the closing of the books. At present the stipulation is that a balance sheet should be prepared for every year within 15 months of the preceding balance sheet. The account of a few months being ready in one year and having been over-looked by the registrar we see it daily that the accounts of 1920 are presented in 1924. This in my opinion is not fair to the share-holders and I think something should be done in this respect.

Q. That is a very important point. I mean if that is so, that practically nullifies altogether the intention of the Act in enabling people to see how the company is doing ?

A. That is my opinion.

Q. I am much obliged to you for drawing our attention to that. Can you give us any instance—a concrete case ?

A. I cannot say off hand, but I would look up one.

Q. Would you like to make a recommendation on a point like that, giving one instance ?

A. I can send this on to you.

Q. Yes. There is plenty of time. Now, as regards the question whether the Government will lose any duty, so far as your certificates are concerned you make no reduction for death or funeral charges ?

A. No.

Q. If a man goes to the court, he does get reduction on funeral expenses ?

A. Yes.

Q. I think five per cent.?

A. Yes. I think the duty which I charge comes to the Local Government and the other duty goes to the Central Government.

Q. The ordinary probate duty goes to the Local Government ?

A. I am doubtful as to that.

Q. I think it goes to the Local Government because the various Legislative Councils in their first period of reforms, have raised the rate of probate duty, and at the present moment there is a bill before the Legislative Assembly, so as to make the rate of probate duty uniform in India. I think the probate duty goes to the Local Government.

A. The rate of fee is fixed according to the rules made by the Local Government and not according to the Act.

Q. But as a matter of fact so far as that is concerned, if there is an Administrator General's Act that will apply to the whole of India—one province will have no grievance over the other ?

A. Yes, and rules as regards fees will have to be modified.

Q. And what modification will have to take place ?

A. I would suggest the probate duty to be fixed at three per cent. which was the old rate.

Q. You mean five per cent. on the first one thousand and three per cent. over that ?

A. Yes. It is not only the duty, but there is court fee.

Q. Well, I understand that in most cases, when you go through the court, the court fee would not be more than five per cent. of the amount at stake.

A. That is so, but if an ordinary person, whose estate is not five thousand, applies to the court in person, then he takes a long time, and so he has to go to the solicitor.

Q. But he will be charged only two per cent. apart from the court fee ?

A. Yes.

Q. Then you think that after one thousand the rate should not be five per cent, and if that was done the Local Government can afford to adjust the figures without any difficulty ?

A. Yes, but if they are going to benefit by the speedy method, they have got to pay for it.

Q. But there is no need. Why should they pay five per cent. beyond one thousand ?

A. I am rather anxious to drop that rate of five per cent.

Q. And it is a question, probably, on which all the provinces should better fall in line.

A. Yes.

There is only one point which I would like to bring to the notice of the Committee, and that is that the copy of the bill should not be prepared in the registrar's office, because it takes a good deal of time there.

Q. For what purpose is the copy made ?

A. It is a copy which is annexed to the probate.

Q. Can that be done otherwise than in the registrar's office ?

A. The English practice is that the copy is always prepared by the Solicitor's clerk, and it is examined in the office, and corrected if necessary.

Q. But the remedy may be to have a properly constituted and efficient registrar's office. Would it be quite safe to allow anybody and everybody to prepare the copy ?

A. I think the English practice works well.

Q. Would the solicitor be able to do that sort of work without charging more than a copying fee ?

A. I think so.

Written Statement of Mr. H. E. JONES, Manager, Oriental Government Security Life Assurance Company, Limited.

I am the Manager of the Oriental Government Security Life Assurance Co., Ltd.

In the course of its business the company has to settle each year over 1,000 claims occurring through the death of persons assured under its policies.

In the case of the majority of these claims, before payment of the policy moneys can be made, the company has to insist on the production by the claimant of legal evidence of title to the policy moneys in the shape of probate of the will if any; or letters of administration, or, where the claim comes from the districts, a succession certificate, or an administrator general's certificate where the amount payable is within the pecuinary limit of such.

On many occasions the company has received complaints from claimants as to the delay in payment of the claim occurring through the insistence on production of legal evidence of title which in most cases cannot be obtained without considerable delay and also without considerable expense as lawyers have in practically all cases to be engaged to procure the evidence of title required.

The effect of this delay in payment of claims through no fault of the company and the trouble the claimants are put to to procure the evidence of title required is to make those persons who have experienced such trouble hesitate to effect life assurance on their own lives, since in the ordinary course it takes a good deal of

persuasion to lead the ordinary man to see the necessity of life assurance in his own interests and the slightest discouragement is apt to put such a man off effecting a life policy altogether.

As it is essential in the interests of the people of this country that the spread of life assurance should be encouraged in every possible way, any amendment of the law towards making it a simpler matter to obtain evidence of title sufficient to enable a life assurance company to pay the policy moneys to the claimants will be welcomed by all life assurance companies.

The most obvious method of endeavouring to make simpler the procuring of legal evidence of title to small estates is to increase the pecuniary limit up to which the administrator general can grant certificates under sections 31 and 32 of his Act from Rs. 1,000 to say Rs. 5,000. As the Act at present stands very few cases occur in the experience of life assurance companies where it is possible to procure the administrator general's certificate as evidence of title, as without taking into account any other estate of a deceased insured person, the policy moneys with bonus are generally in excess of Rs. 1,000.

It appears that the limit of Rs. 1,000 has not been altered since the Administrator General's Act was originally placed on the statute book in 1867 and it is needless to point out that at that time the purchasing power and value of a rupee was very much more than at present and it would seem on general grounds unreasonable to have at present the same limit as that which existed 57 years ago.

It would appear that when the Act was amended from time to time, this question of raising the limit for administrator general's certificates was overlooked as it was never perhaps brought forward by any party, but it would seem that it is now time that this limit should be increased to a higher figure, say, Rs. 5,000.

On a full consideration of the question it would appear that no valid objection can be urged to this extension of the limit. On the contrary it would tend not merely to greater facilities and convenience of the general public, but would also appreciably reduce the work on the non-contentious Testamentary Side of the High Court, as also the work of the district courts who have to deal with applications for probate and letters of administration, because it cannot be denied that the party would much prefer to have a certificate from the administrator general rather than go to the expense and trouble of obtaining a grant of letters of administration or probate.

In the case of a certificate by the administrator general, if any person has died leaving assets within the presidency, that gives jurisdiction to the administrator general of the presidency to grant a certificate. It is not necessary that the applicant for the certificate should appear before him, so that wherever that party may be in the presidency he can get the certificate, because the necessary papers for signature are forwarded to him by the administrator general. There is only an application to be signed and sworn to, and then the certificate is granted. The procedure as regards the grant of probate or letters of administration is much more cumbrous and takes up a much longer time.

As regards revenue due to the Government, the fees on probate or letters of administration levied under the Court Fees Act VII of 1870 as regards assets between Rs. 1,000 and Rs. 10,000 are only 2 per cent. in addition to certain court fees levied by the High Court on the filing of the petition, the issue of notices and the issue of the grant, etc., which generally come to about Rs. 100, the total court fees in most cases being within 5 per cent. of the amount of the estate. With regard to the certificates of the administrator general, a fee of 5 per cent. is charged in Bombay for all such certificates, so that even though the pecuniary limit of the administrator general's certificates be raised there would be no loss of revenue to Government on that account.

It is suggested in this connection that the local Governments might adjust such fees to meet an amendment of the Act such as is proposed. In fact the rate of 5 per cent. might well be reduced in the case of estates between, say, Rs. 2,000 and Rs. 5,000.

In a consideration of all the points, it is of course also to be remembered that when a party applies to the High Court or to the district court for grant of probate or letters of administration, he is allowed a deduction of funeral expenses and debts in the calculation of the duty, whereas in the case of certificates of the administrator general he would have to pay on the estate without such deduction. It is submitted, however, that the loss of this benefit to the individual is negligible, as in the case of an estate between Rs. 1,000 and Rs. 5,000 the item of funeral expenses which would be legitimately allowed by the court, would hardly be Rs. 200 and as regards the question of debts it is a figure that would appear in a few cases only.

On the whole, there appears to be no valid reason why the limit for administrator general's certificates should not be increased to a higher figure, say, up to Rs. 5,000.

Letter from the Secretary for India, The Standard Life Assurance Co., Calcutta, to the Secretary to the Government of India, Legislative Department, Delhi, dated the 18th November 1919.

On behalf of my Company and the other life assurance companies whose signatures are appended, I have the honour to submit the following exposition of certain deficiencies in the existing laws affecting policies of life assurance and to ask that the necessary legislation may be introduced in order to remove the ambiguities and remedy the defects referred to.

2. By the ordinary policy of insurance of the class known as " whole life " policies the insurance company contracts to pay upon the death of the assured, a certain sum, at a particular place, to the executors, administrators or assigns of the assured. Except in the cases where there has been an assignment, the only person who, in terms to the contract, is entitled to payment is the executor of the Assured's will or the administrator of his estate. If the will was made in that part of British India in which the Hindu Wills Act, 1870, is not operative, the executor may be entitled to payment without obtaining probate of the will; but otherwise it would seem that the claimant, in order to enforce payment, must, if he claims as executor, produce probate, or, if he claims as administrator, produce letters of administration in his favour, having effect at the place where the policy is payable. This, it is conceived, is the strict legal position, but in practice claims are frequently made by persons solely upon the title of a certificate granted in respect of the policy under the Succession Certificate Act, 1889. Such a certificate, it is submitted, in reality confers no right to enforce payment, for the holder does not occupy the status either of an executor or an administrator to whom alone the insurance company has contracted to pay the amount assured; and the validity of such a certificate, moreover, is open to doubt in that the policy does not represent a debt due to the assured himself or one of which he personally is entitled to payment and the insurance company is therefore not the debtor of the deceased person (the assured) within the meaning of section 4 of that Act. Despite the apparent want of jurisdiction, the courts in India commonly do grant such certificates and, as the procedure involved in their procurement is comparatively inexpensive, insurance companies are reluctant to insist upon the production of probate or letters of administration and usually admit the claim of the certificate holder in reliance upon the indemnity afforded by section 16 of the Act. But it is apprehended that, when judicially tested, the indemnity may be found to be not complete, and it is submitted that, if the intention is that the Act shall enable the grant of certificates in respect of policies such as those in question, the Act should be amended so as expressly to include those policies within the definition of the debts to which the Act applies.

3. It has been settled by a series of judicial decisions that the Act does not apply to a debt owing to joint Hindu family governed by the Mitakshara law, and in respect of such a debt the courts accordingly refuse to grant a certificate, on the ground that upon the death of a member of the family the cause of action in

respect of the debt does not devolve upon the other members by right of inheritance, but rests with them by right of survivorship. Where the assured is a member of such a family, the presumption is that the premia are paid by him out of the joint family property and that the benefit of the policy belongs to the joint family. At the death of the assured the beneficial interest in the policy is therefore in the persons who then constitute the joint family, and to establish their title to that interest no probate or letters of administration are needed. No succession certificate can be produced by the claimants in such a case and a grant of Letters of Administration (there is naturally no will) can be obtained only on the hypothesis that the assured was a trustee of the policy for the family. But if the assured were (as is mostly the case) the *karta* of the joint family, the adoption of this theory involves the admission that he was trustee also of all the other property of the family of which he had control, and, although no court-fee is chargeable on the grant, the claimant, merely in order to recover the policy moneys, is compelled to assume the duties and responsibilities of an administrator in respect of the whole of the family estate. Rather than require adherence to the strict terms of the policy in such cases (insistence upon which would tend to the unpopularity of life insurance and retard the general adoption in this country of the benefits of the system), insurance companies prefer to make payment to the person who may be shewn to be or to have become the *karta* of the joint family. But this places the company in a difficult position, for it entails upon the company the burden, not only of satisfying itself that the assured was in fact a member of a joint Hindu family governed by the Mitakshara law and that the benefit of the policy is the property of the family (and not the "self-acquired" property of the assured), but also of ascertaining that the claimant is the *karta* of that family and authorised to give a discharge for the policy moneys on behalf of the family. The responsibility obviously attendant on this course is entirely foreign to the ordinary business of life assurance companies and is, it is believed, sufficient to deter some companies from undertaking the insurance of Indian lives.

4. Legislation is now proposed by the Government of India on the lines of the Registration of Business Names Act, 1916, in force in the United Kingdom. It is submitted that the opportunity should be taken to extend this legislation to the registration of partnerships, and that every joint Hindu family should be treated as a partnership and its registration be enjoined in the name of its *karta* for the time being. Such registration would enable insurance companies to deal with the *karta* without the need of the investigation above alluded to and would thus relieve this branch of insurance business from the unnecessary difficulties and risks which now hamper its legitimate expansion. Short of this, no solution of the problem appears to present itself than the passing of a special enactment to define the position and the remedies of the beneficiaries under policies of insurance in those cases where the assured is not subject to the operation of the Indian Succession Act.

5. In this connection it is to be observed that doubt exists, in consequence of conflicting decisions of the High Courts in India, as to the operation of section 6 of the Married Women's Property Act, 1874, in the cases where the assured, for the benefit of whose wife and (or) children the policy is expressed to ensure, is a Hindu. The application of the section appears to be restricted by the second paragraph of section 2, which is as follows:—"But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband at the time of such marriage professed any of those religions." The Calcutta High Court held (in the case of Eshani Dasi *v.* Gopal Chandra Dey, 18 C. W. N., 1335) that a policy effected by a Hindu for the benefit of his wife *and* children is not governed by the provisions of section 6 of the Act, for though section 2 refers only to the woman and does not expressly exempt the children from the operation of the Act, the intention of the Legislature, reading the Act as a whole, is to exclude the children also from the benefits of section 6. The view that section 6 does not apply to policies effected by Hindus has been adopted also by the Bombay High Court. But the Madras

High Court arrived at the contrary view in the case of Balamba *v.* Krishnyya (I.L.R. 37 Mad. 483), and held that where a Hindu male effected a policy on his own life expressed on the face of it to be for the benefit of his wife, or his wife and children or any of them, but payable to his executors, administrators and assigns, and died leaving a daughter, section 6 applied to the case and by virtue thereof a trust was created in favour of the daughter. In order to set at rest the doubt so existing, the Act, it is submitted, should be amended by the insertion of an express declaration as to whether or not a policy of the kind referred to in section 6 is within the purview of that section, where the person effecting the policy is a male Hindu, Muhammadan, Buddhist, Sikh or Jain.

A further source of dispute, affecting all classes of life policies, lies in Chapter VIII of the Transfer of Property Act, 1882. A policy, to judge from illustration (ii) to section 130 of this Act, falls within the definition of actionable claims to which this Chapter relates, and an actionable claim is presumably to be regarded as "moveable property" within the meaning of section 123 of the Act. Section 130 (1) declares that a transfer of an actionable claim shall be complete on the execution of an instrument of transfer signed by the transferor or his agent. An assignment of a life policy by way of gift would appear therefore to be effectual despite the non-observance of the formalities of attestation and registration prescribed by section 123 of the Act. Such gifts are of common occurrence, and are made in most cases by an assured with the object of affording the like provision for his wife or children which section 6 of the Married Women's Property Act, 1874, is designed to protect. The company is not called upon to express an opinion as to the validity of the assignment, and indeed is not concerned to discuss it, until the policy matures, when it is of course too late to remedy any defect which may exist. If, notwithstanding the terms of section 130, attestation by two witnesses and registration is necessary to the validity of such an assignment, the neglect of either of these formalities may result in the avoidance of the gift and in the benefit of the policy being claimed by the assured's creditors. It is submitted that the Chapter VIII of the Act should accordingly be amended by the insertion of such a provision as will indicate whether the voluntary assignment of an actionable claim is or is not subject to the provisions of section 123 of the Act.

Mr. D. FORREST, Actuary, Oriental Government Security Life Insurance Coy., Ltd., Bombay, called and examined on Monday, the 1st September 1924.

Chairman.—*Q.* We have already been discussing with the other witness the main points in your written statement, and your point is, from the point of view of the insurance company, and from the point of view of the clients, that it would be a great advantage if you get a certificate from the administrator general up to five thousand rupees ?

Mr. Forrest.—*A.* Yes.

Q. And further you say that they have at present to pay five per cent and do not get any allowance for death or funeral expenses, and you think that the charge made for it might be less than five per cent. from the total amount ?

A. Yes.

Q. You think that the grant of probate in a fairly simple case takes a lot of time.

A. We only know from hearsay. It takes from 3 to 4 months.

Q. Are there any points about legal procedure in general in which your company is interested ?

A. The average policy effected in the offices in India is over Rs. 2,000. The limit for which the administrator general can grant certificate may be increased.

Q. Would it increase the facilities from your point of view, if the limit is increased to Rs. 5,000 ?

A. Yes. It would help us a great deal. We only want that it should be over 2,500. It would facilitate small claimants. They are put to great difficulties at present.

Mr. K. J. DESAI, retired First Class Sub-Judge, Ahmedabad.

Written Statement.

It is a truth recognized by science that the health of any multi-cellular organism is maintained in such a way as to secure the natural pleasures due to it, so long as its functionaries are faithfully and efficiently performing their respective functions, all faithfully co-operating to secure the natural aim of the organism. It is equally true that its health will be maintained despite inactivity or even perversion of its lower functionaries so long as the higher functionaries are able to bear and as a matter of fact do bear the additional burden and strain which the above said inactivity or perversion necessarily entail upon them. If the chief functionaries get inactive or perverted, the organism will surely suffer in health and be miserable though the remaining functionaries continue to be active and efficient as they are naturally unable to make up for the deficiency or remove the mischief caused by the inactivity or perversion of the chief and really vital organs or functionaries.

What is true of natural organisms is equally true of the judicial organism as created by the Legislature.

So long as this organism continues healthy and sound it will secrete justice without any abnormal delay and there will be no miscarriage of justice as a general rule and the public for whose benefit the organism exists as its part and as a result of the working of the law of division of labour in the social organism, will enjoy full advantages of its health and will have no ground of complaint.

It is evident from what is stated above, that it is necessary for the maintenance of the health and strength of a judicial organism that its chief and vital functionaries, the presiding judge, the practising Bar and the nazir and the clerk of the court and also the minor and subordinate functionaries, should continue to perform their respective functions in a healthy and efficient manner and that the vital functionaries should be able and ready to bear the extra strain which the inactivity or perversion of some of the other functionaries will entail upon them for the purpose of counteracting their effect.

But as soon the chief and vital functionaries the presiding judge, etc., get inactive or inefficient or a real and efficient co-operation of the Bar is found wanting the organism will get deranged and there will be absence of substantial justice : no doubt an efficient and honest subordinate staff is necessary for full and satisfactory justice but the defect or weakness in the latter can be counter-acted or cured to a great extent by the chief functionaries in various ways if they are ready to bear the extra strain for the purpose.

The real work that is required to be done by Government and the High Court is to secure efficient and conscientious chief functionaries for the court and efficient and faithful subordinate functionaries. Whatever method be adopted for first recruitment of judicial officers, it will always be found open to some objections as the data for unerring selection are few and not always reliable. But some method has to be adopted, and I would suggest that the first ten successful LL.B. or High Court pleader candidates for each year may be considered eligible for the post of a sub-judge provided there is no other disqualification found in them.

The right to select any one from amongst the remaining number on the ground of certain special qualifications may be reserved to Government as exceptions to the general rule.

After the recruitment, the work of each officer should be carefully watched and noted. This can be done (*a*) by periodical examination of monthly, half yearly and yearly returns of decided cases, (*b*) the appellate courts making notes of the quality of work turned out by each sub-judge as noticed by them while hearing appeals against his decision, (*c*) the district judges thoroughly examining the record of decided cases for a few months every year and making a report as to the result thereof, (*d*) confidential reports as to the general reputation of such officer.

A faithful record for the work thus noticed should be kept in High Court and Government and the meritorious services must be properly rewarded and remissness in the discharge of duties should be properly dealt with. This is absolutely necessary for the maintenance of the healthy tone of the judicial officers and also of their subordinate staff.

A standard of work expected to be done by each officer can be ascertained by work done by an officer of tried ability and integrity. If certain officers of average ability but possessing a strong desire to do their duties are found to have successfully managed the files of their courts without any extra help their successors can be legitimately expected to do the same so long the file continues to be the same and provided they are nearly of the same grade as their predecessor.

The frequent extra help to subordinate judges that has been now and then given in recent years has contributed to some extent to the lowering of the tone of the judiciary and is responsible for delays to some extent.

Reward established merit fully and satisfactorily, deal with demerits severely and there will be a healthy tone of the important functionaries and all the complaints as regards delays, etc., of courts will disappear as all the complaints of a body disappear when the nervous system gets strong and other important organs remain sound, the former going a great way in maintaining such soundness.

With this short prelude, I proceed to answer the questions put.

2. The time now taken for the disposal of proceedings referred to in question 1 does often exceed the time they are reasonably expected to take up. Wherever delays in the disposal of suits, appeals or other judicial proceedings are noticed, either one or more of the following causes will be found to have operated to bring about such results :—

(1) The tendency of the presiding judge to shirk heavy and complicated work and to attend to only simple matters, having its origin in various causes.

(2) Frequent adjournments granted to suit the personal convenience of a pleader or pleaders appearing in such cases.

(3) Machinations of intriguing litigants bent upon having proceedings protracted in their sole interest.

(4) Want of proper method of work all round.

(5) Non-availing of such provisions of the Civil Procedure Code before commencing to take evidence of the witnesses, as would have greatly curtailed evidence in many cases, if resorted to at the proper time.

(6) Delay in preparing processes and handing over the same to process-servers for service or neglect on the part of the process-servers to serve the processes on the parties or their witnesses, induced by various causes.

(7) The number of parties, either plaintiffs or defendants, being great, and some of them happening to die during the pendency of the proceedings, a great deal of time is wasted before the representatives of such dead parties are brought on the record and they and other parties are served with summons.

(8) The record of the whole case having been called for by the appellate court even when an appeal is preferred from an interlocutory order which does not interfere with the trial of the suit, pending its disposal.

3. The removal of the causes specified in answer to question 2.

4. As there is a real difficulty in making a proper selection for the post of a subordinate judge on the basis of comparative merits, for want of reliable materials the safer method to adopt would be to take the first 10 out of successful LL.Bs. or High Court pleaders of each year as *primâ facie* fit for being selected, and none of them should be passed over unless found to be otherwise disqualified.

Two-thirds of the higher posts of assistant and district judges available to non I.C.S. men should be thrown open to subordinate judges, who have established their reputation as officers of real abilities as disclosed both by the quality and quantity of their work and the remaining ⅓rd should be made available to the members of the Bar who have been found to be really efficient lawyers of long standing capable of doing hard and intelligent judicial work.

If the doors of higher posts are either closed or only kept open to a small extent candidates of real merit will not be attracted to take up the posts of subordinate judges and the result will be that substantial original civil work will suffer.

5. Too frequent transfers of judicial officers do contribute to delay in the disposal of some cases.

7. The amount of work in point of its quantity and quality which a judge can legitimately be expected to do, can be determined by the quantity and quality of work turned out in a given time by a judge of known integrity and ability.

If a judicial officer of established reputation has successfully coped with the file of a particular court for a long period, his successor too is expected to do the same so long as the file remains the same in point of quantity and quality and if he reports arrears and asks for extra help, he must be required to furnish very satisfactory explanation for the arrears which did not exist in the time of his predecessor before extra help is allowed. This will operate as a healthy check.

The efficiency of a judge can safely be determined by the quantity of work done by him as disclosed by the monthly and annual returns of decided cases, by the quality of such work as discovered in appeals from such cases and by the confidential report of different district judges under whom such officer happened to have served at different times and at different places. Such confidential reports to be made on the strength of the experience each district judge got as an appellate judge as also as the result of the substantial examination of records of cases disposed of by the subordinate judge during each alternate month in a year. Such records are available at the sadar station and such examination with the help of the clerk of the court is not likely to take up more than a day of the district judge.

If a district judge devotes only one day a month for each inspection he will be able to know the real work done by 12 sub-judges under him in a given year.

These three chief tests are ordinarily sufficient to determine the efficiency of a subordinate judge.

8. Concentration of many courts at one place contribute to some extent to the causes of delay, especially, as often happens, when the important cases are in the hands of a few leading pleaders who have to attend many courts on the same day.

9. No, so far as Bombay presidency is concerned.

10. No.

11. There being no district munsiff in this presidency, I express no opinion on the point.

12 & 13. First class subordinate judges and selected 2nd class subordinate judges may be invested with powers to hear and dispose of such applications for probate, letters of administration, guardianship of person and property, land acquisition proceedings as may be sent to him for disposal by his district judge.

15. It is not desirable to extend the present jurisdiction of the courts of small causes in any direction.

16. Not desirable to introduce it.

17. No.

18. No. The suggestion is not acceptable.

20. No.

21. Yes.

22. Yes.

23. No.

24 & 33. Examination of parties after the written statement is put in by the defendant with a view not only to know the points on which the parties are at issue but also with a view to get all the information which the interrogatories and affidavits of documents, admission or denial of certain facts alleged by one party in support of facts in issue and inspection of documents are intended to secure, will tend much to curtail evidence and to prevent irrelevant and unnecessary evidence. The suggestion that steps to secure the attendance of witnesses may be taken up after such an examination of the parties is over is acceptable. If any formal change in the existing provisions relating to trial is required to enable the court to do this, the same may be effected.

Witnesses cited by each party often belong to the same place as the parties and they are generally known to and so connected with the parties as to enable them to call them to court without summonses. Such witnesses insist upon summonses being served upon them in order to avoid the appearance of being partial witnesses under the influence of the parties. If parties are allowed to serve witness-summons on such witnesses of their own, much time of the court will be saved. When it is alleged by one party to the proceedings that the other party is deliberately managing to prevent service of summons being effected on certain witnesses with the sole object of protracting litigation such complaining party may be allowed to effect such service himself with or without the help of a process-server as the circumstances require.

Such a procedure will go a great way in expediting proceedings when the judge and the Bar are ready to go on with them.

25. The remedy already provided for is sufficient. The bailiff may be required to seek the assistance of the parties when he fails to effect service himself.

26. Forms usually adopted are found satisfactory.

27. No.

28. The use at present made of the agency of the post office for the purpose of effecting service of processes, can safely be extended; village officials can not be trusted for the purpose though their help may be sought for if needed either by the court process-server or the party.

29. Yes, it can be done with advantage.

30. The suggestion is acceptable. When accepted the old practice which required this to be done would revive with advantage.

31. Existing provisions do not seem to require any substantive change.

32. The provisions of Orders XI and XII, Civil Procedure Code are often not fully and substantially availed off. The thorough examination of the parties before commencing to record evidence referred to in answer to questions Nos. 24 and 33 will do away with the necessity of having recourse to this provision which takes up an amount of time in serving notices of such motion on the opposite party and much time of court in going through the pleadings of the parties before any order can be passed.

34. The rule is generally put into force.

35. The answer to questions 24 and 33 would suffice as an answer to this question too.

36. It will suffice if the rule is made permissive.

37. It is not desirable to give such discretion.

38. The state of things in the moffusil would not justify such extension.

39 & 40. In the cases of the Mitakshara families, Malbar tarwad, co-owners and partnership when a suit is filed by or against some members as representing

all, is it desirable that others should be served with notices of the suit, and if they fail to apply to be made parties the law should make the final result binding on all.

41. To expedite proceedings, the rule suggested may be adopted.

42. Undue advantage is taken in a few cases but the existing law is sufficient to check it.

43. No.

44. Yes.

45. Generally dates of adjourned hearings are fixed by the judges in consultation with pleaders concerned.

47. Examination of witnesses on commission does not interfere with the trial of the suit so far as other witnesses are concerned and hence no modification of the existing law is required.

48. The insistence of application for adjournment being supported by proper affidavits and awarding of the costs of the day will have some check on such applications.

49. At times they are not continuously tried day by day in some courts.

51. I do not see any special reason to treat commercial suits differently from other suits except placing them in a list of short causes where it is possible to do so.

52. The existing procedure does not, in my opinion, need any amendment.

53. The principle may be extended to proceedings in execution of a decree passed in a suit in which the defendant has put in appearance either in person or through a pleader.

54. Such courts may be invested with the powers suggested.

55. The suggested modification in the provisions of section 47 may be made.

56. I think the period of 12 years prescribed by section 48 needs no curtailment but it is necessary to repeal article 182 thus leaving a decree holder free to execute his decree at any time he likes within 12 years. This will reduce the number of darkhasts to a great extent.

57. I do not think the suggested alteration is desirable.

59. The suggestion in the first part of the question does not seem to be open to any objection. The suggestion in the other part of the question to delete rule 16(2) of Order XXI is objectionable.

60. No.

61. Notice required by rule 22 (1) a may be dispensed with but the one to the legal representative of the judgment debtor cannot be safely done away with.

62. The modification of rule 26 of Order XXI so as to give wider discretion to courts to refuse stay of execution except in exceptional circumstances is desirable.

63 & 64. The frequent notices now issuing delay execution proceedings. It would suffice if the judgment debtor is once apprized of the proceedings and served with a copy of the sale proclamation.

65. No.

66. The suggestion in caluses (*a*) (*b*) (*c*) and (*d*) of this question do not appear to me to be open to any objection. They can therefore be safely adopted and the necessary change in the existing law or rules may be effected.

Six months time usually granted is sufficient and necessary. The personal decree may be passed in the same suit at the time of passing the mortgage decree. The decree may be made executable after mortgaged property is sold and found insufficient.

67. No.

68. No.

69. The insolvency law must necessarily come in the way of a decree holder realising the fruits of his decree.

Insolvency proceedings should be expedited and the existing law does not come in the way of such expedition.

70. Such instances are rare.

71. None.

72. Yes.

73. It is desirable.

74. It is not desirable to make the law more stringent.

75. Given an able and conscientious judge and a Bar ready to co-operate with him in the speedy disposal of cases, no substantial change in the existing law will be needed for the speedy and satisfactory disposal of cases.

76. Yes. It is necessary that partnership deeds should be registered and that none but the partners named in it should be recognized as partners. This is necessary for the purpose of safe-guarding the interest of the public dealing with such partnerships.

78. I think that having regard to the illiteracy of the masses the exception to the rule created by decided cases may be retained for some time more.

79. The suggestion may be given effect to.

80. The general proposition is not acceptable in the present state of society.

81. The doctrine of reputed ownership should not be pushed further than it goes at present. *Benami* transactions are recognized throughout India and they should not be disturbed all at once.

82. No.

83. Both the sale deed and the mortgage deed should be required to be attested by two witnesses at least.

84. It is not advisable to enact any law so as to enlarge the provisions of section 23 of the Contract Act to prevent transactions on the ground of champerty and maintenance in this country.

85. No.

86. Yes, to some extent.

87. Certainly.

Mr. K. J. DESAI, retired 1st Class Subordinate Judge, Ahmedabad, called and examined on Monday, the 1st September 1924.

Mr. Justice Stuart.—*Q.* When did you enter the service ?

A. In 1901.

Q. When did you retire ?

A. Last year.

Q. Were you then 55 years of age ?

A. Yes.

Q. Did you get your full pension ?

A. No. I got only a small pension.

Q. Why ?

A. Because I did not put in my full service.

Q. You are one of the men who joined the service late ?

A. Yes.

Q. How long were you a first class subordinate judge ?

A. Eight years.

Q. In what district ?

A. In Ahmedabad, and for four months at Broach.

Q. In your opinion the real trouble is the want of proper co-operation between the Bench and the Bar, and your experience is that where the Bench and the Bar co-operate, there is no serious delay of any kind ?

A. There is co-operation, but it should be efficient and conscientious.

Q. When you joined the service was the work considerably less than what it was at the time you retired ?

A. It was greater in many courts.

Q. But yet cases were decided very expeditiously ?

A. Yes, and by fewer judges. They were not helped.

Q. What is the explanation ?

A. That is the chief cause to be ascertained ; that at a time when the number was greater, only one judge was able to cope with the work, without any help.

Q. Have you examined the figures of contested cases ? Do you mean to tell me that there were more contested cases than there are now ?

A. The proportion of contested cases has not increased.

Q. Is it not a fact that the proportion of contested cases has increased ?

A. Except in some places like Ahmedabad, I do not think that it has increased. Of course there may be a little more complexity owing to the number of experienced vakils being greater.

Q. Do you mean that the more capable a vakil is, the more complicated he makes the matter ?

A. Yes. An experienced vakil may take up a certain legal position which may not have suggested itself to a man with less experience.

Q. Surely not. Should not an experienced man arrive at a more sensible conclusion ?

A. That does not make much difference. I do not think that the proportion of contested cases has increased.

Q. But, at any rate, the amount of arrears has increased very considerably ?

A. Yes.

Q. Do you think that the present staff has got any prospect of clearing off these arrears without assistance ?

A. I think so.

Dr. DeSouza.—Q. How many original courts are there at Ahmedabad ?

A. Five, two first class subordinate judges' courts and three second class subordinate judges' courts.

Mr. Justice Stuart.—Q. They will quicken up the work in the original courts. How about the courts of appeal ? There is very grave delay in hearing appeals. Can you suggest any method of quickening them up ?

A. To be a little strict in admitting appeals.

Q. Under Order XLI, rule 11 ?

A. Yes.

Q. Is there any reason why, once you have admitted an appeal under Order XLI, rule 11, it shoud take two years before it comes on for hearing ?

A. That may be due to congestion of work and various other causes.

Q. I take it that you had appellate powers for a good many years before you retired ; how many years ?

A. Two years.

Q. During that period how often did you come across really difficult points of law, in appeals under one thousand rupees ?

A. Not very often. Such cases were very very few.

Q. Did you ever find in any of the districts that the parties suffered owing to the incapacity of the district Bar to argue points properly ?

A. There were such cases also, but only a few.

Q. In any place where you have been, either as a subordinate judge first class or a subordinate judge second class, did you find that there were not always competent men to argue any point that came before the courts ?

A. There were.

Q. At times points of law of real difficulty do occur, but is not the statement that in many cases it is necessary to go to Bombay to obtain efficient advice a little exaggerated ?

A. I do not think that such cases exceed more than four or five per cent.

Q. You are rather sceptical as to the scheme by which judges are selected by a committee or anyone else, and you prefer to appoint on the result of the law examination ?

A. Yes, because the first selection is always dubious. There are not proper and reliable data in the beginning and so I prefer that the first ten successful candidates may be considered eligible, unless there are reasons to the contrary.

Q. What can be the reasons to the contrary in the opinion of the selecting officers. Do not you think that the very best method is to give interviews ?

A. A personal interview is not advantageous. A first hand impression is created and the man does not ultimately turn out to be what he appears to be.

Q. Did you find, when you were in service, that the inspection by the district judge was as good as it should be ? Were they able to devote sufficient time ?

A. I think that is my complaint.

Q. That the inspection is not sufficient.

A. If it were regularly made, then, I think, it will have effective check, and will establish a healthy tone in the judiciary.

Dr. DeSouza.—Q. In what repects did you find the inspection of your court ineffective ?

A. I talk of no particular court. Generally the head clerk is engaged to see the rosnamas. He finds fault with the adjournments. None cares to look to the actual decisions passed by the judge. If the district judge sees as to how many judgements were delivered in a particular month, how many were compromised and how many were withdrawn, then it will give a clear idea of the work done.

Q. Is it what you mean that the inspection is done by the head clerk.

A. No.

Q. What does the district judge do when he comes to your court to inspect your work ?

A. He relies upon the notes prepared by the establishment.

Q. Does the clerk also examine the judicial work of the subordinate judge ?

A. No.

Q. What does he do ?

A. He looks to the rosnamas and notes as to how many adjournments were granted and something like that.

Q. Does not the district judge examine personally ?

A. That is very often not done.

Q. Why ?

A. I think he has not got sufficient time.

Q. Are the district judges sufficiently equipped to examine the rosnamas and order sheets ?

A. I don't think so. If actual decisions are examined each month, it will give a clear idea of the work done by each man.

Then, there is another point which I would like to mention. As soon as the written statement is put in, not only both parties should be examined but also all information as to interrogatories and affidavits should be given. Then, the trial must begin as soon as possible. The parties must be allowed to serve the summons on the witnesses themselves, because they would all belong to the same place and would be connected with them in some way. If that is done I am sure the trial will be expedited. As to costs also, there are so many cases which work hardship, because a rich litigant fighting with a poor man will engage a counsel from Bombay paying Rs. 1,500, perhaps much more than the amount at stake in the litigation. So a minimum and maximum should be fixed and ample discretion should be given to the district judge.

Q. Did you experience any very serious difficulty at Ahmedabad, because you had no knowledge of commercial work ?

A. No. I had commercial experience even before I entered service. I was a business man myself.

Q. Would an ordinary subordinate judge experience difficulty ?

A. Yes. Some find it difficult.

Q. Will you give us a very short account of the commercial work at Ahmedabad ?

A. All sorts of contracts, *c.i.f.* contracts, exactly of the same nature as in the High Court. At present there are suits worth 30 lakhs and 15 lakhs in which there are complicated questions of law and fact.

Q. Do you consider that it is not at all fair that a first class subordinate judge who has never served in a business district should at once be appointed to try those suits ?

A. Yes.

Q. Sometimes interlocutory orders are passed and disastrous results follow.

A. Yes. There were certain applications made for attachment of property before judgment. If I had passed the order, the consequences would have been really disastrous. If I had granted the attachment and sold the property, it would have fetched only 5 as. in the rupee. I persuaded the people to keep quiet.

Mr. S. S. PATKER, Government Pleader, High Court, Bombay.

Written Statement.

(1) The period reasonably required for the disposal of *First Appeals* (High Court Appellate Side) should be one year and a half. Second Appeals—one year. Miscellaneous Appeals—6 months.

(2) No. The main causes of delay in some cases are delay in the service of notices, death of any of the parties, delay due to translation of documents and preparation of record.

(3) With regard to subordinate courts the general remedies for shortening the period during which civil proceedings are now pending are (1) proper selection of judicial officers, (2) strict supervision of the working of the subordinate courts by High Courts, (3) strict enforcement of the rule that when once a trial has commenced, it should be heard *de die in diem* until completed, (4) making compulsory examination of parties under Order 10, rule 2 and also filing of affidavits of documents and discovery by interrogatories and inspection of documents under Order 11, (5) by amending rules as to joinder of parties by enacting that the manager of a joint family may sufficiently represent the joint family, (6) by improving the machinery for the service of summons and other processes of the court through the post office in places where the post office is situate or through

the village officers, (7) determining the efficiency of the judicial officers by the quantity and quality of their work and not merely by disposal of work.

(4) There is a recent change in the recruitment for the selection of subordinate judges in this presidency. Recruitment is now made from the practising lawyers The age limit should be extended from 30 to 35. The assistant and district judges should be recruited from practising lawyers to a larger extent than at present. Efficiency should be the sole test for appointment of district judges and High Court Judges.

(5) No special training is necessary for subordinate judges. After the first appointment they should be attached for a short time to the courts of first class subordinate judges and district judges.

(6) Too frequent transfers should not be made.

(7) See (7) in answer 3.

(8) No.

(12 and 13). The district judges are given the assistance of registrars. It is not therefore necessary to relieve them of ministerial work. Applications for probate, letters of administration, succession certificates, land acquisition references are now transferred to assistant judges and may also be transferred to first class subordinate judges.

(15) There is no necessity to extend the jurisdiction of the provincial small cause courts but the jurisdiction of the presidency small cause court may be extended so as to give it jurisdiction to try suits with respect to immovable property of the value of Rs. 5,000 or under *viz.* the recovery and partition of immovable property and suits for redemption, foreclosure and sale of immovable property in mortgage suits, suits relating to rights of easement, suits for declaration of title and injunction with respect to immovable property, suits for specific performance and recision of contracts and suits for dissolution of partnership or for an account of partnership transactions where the subject matter in dispute does not exceed Rs. 5,000. Pecuniary jurisdiction in respect of money claims should be extended from Rs. 2,000 to Rs. 5,000.

(18) 1st part in the negative. 2nd part, answer unnecessary.

(19) (*a*) No.

(*b*) There is no Letters Patent appeal in revision. Letters Patent appeal should be allowed in appeals of the value of Rs. 1,000 or under.

(20 and 21) No.

(22) Yes. No answer necessary to the 2nd branch.

(23) No. I think that no hard and fast rule should be laid down to curtail the right of the High Court to interfere in revision. Section 115, Civil Procedure Code contains limitations on the power of the High Court to interfere. There are cases which require immediate and speedy redress even in interlocutory matters. It should be left to the discretion of the High Court to interfere according to the circumstances of each case.

(28) Yes ; see answer to question No. 3, clause 6.

(29) There is no objection to require the parties to give a registered address with an option to change it from time to time and service at the last registered address should be considered good service for all purposes of suit and execution.

(30) I see no objection to the suggestion.

(31) If the procedure laid down in Order 10 and Order 11 is made compulsory, proper issues would be framed. Parties should be allowed liberty to suggest issues and if the Court rejects any of them, it should record its reasons in writing. In appeal the judge should frame points for determination before the arguments.

(32) The procedure of Orders 10 to 12 should be made compulsory.

(33) In the affirmative on both the points.

(37) The suggestion is neither desirable nor practicable.

(39) The principle of representative suits may be made applicable to suits by or against joint hindu family governed by the Mitakshara law.

(40) Owing to the recent amendment in the Limitation Act, it is not desirable to throw the obligation on the legal representative to come forward as suggested.

(41) The suggestion made in the last portion of the question may be accepted.

(42) No.

(43) No.

(48) Power should be given to court to award costs of the day and fix the amount in special circumstances.

(52 to 54) The principle of section 21 should be extended to proceedings in execution. Courts to which decrees are transferred should be invested with powers referred to in question No. 54.

(55) Section 47 is held not to apply to decree-holder purchasers by the Full Bench of the Bombay High Court in 26 Bom. L. R. 601. I would be in favour of modifying the language of section 47 to include proceedings taken by decree-holder purchasers at a court sale to obtain delivery of property purchased, but not by a stranger purchaser.

(56) The period of limitation under section 48 for money decree should not be curtailed. In art. 182 the starting point may be altered to the date of the last order on the last application.

(57 and 58) I am not in favour of the alteration.

(59) I am not in favour of the alteration. The judgment debtor can show that he has satisfied the decree when the court which passed the decree considers the application under Order 21, rule 16. *25 Bom. L. R. 474.*

(60) No objection.

(61) Cl. 2 of Order 21, rule 22 is sufficient safe-guard against delay.

(62) Order 21, rule 26 Cl. 3 gives sufficient power to the court to impose conditions.

(63) No objection to the suggestion made.

(64) No objection to the first two suggestions. I am not in favour of the last two suggestions.

(65) I have no objection.

(67) No.

(68) In the affirmative.

(72) Yes. I am not in favour of the change suggested.

(73) Parties may consent to secondary evidence being given as suggested.

(76, 77, 78 and 79) Yes.

(80) I am not in favour of the change suggested.

(82) No.

(83) No. There is no justification for making any difference between mortgages and sales.

(86) The number of Law Reports may be minimised by strict adherence to Section 3 of Act 18 of 1875.

(87) No. Codification of personal law would make it rigid and its development by custom will be retarded. Codification will be difficult.

Mr. S. S. PATKER, Government Pleader, Bombay, called and examined on Monday, the 1st September 1924.

Dr. DeSouza.—Q. As a Government pleader in the High Court, what is the nature of the civil litigation, with which you are concerned ?

A. They are regular appeals, and suits against the Secretary of State. That is one kind. Secondly, there are appeals in land acquisition cases and civil references and stamp references and other kinds of work.

Q. Your main work as Government pleader is appeals and suits against the Secretary of State.

A. Yes. Also appeals in land acquisition proceedings.

Q. What is your view about the present method of trial of suits against the Secretary of State by the district courts alone ? Do you think that all suits against the Secretary of State should necessarily lie in the court of the district judge ?

A. I should think that they should lie in the district court because people have got more confidence in the district courts than in the courts of the 1st or 2nd class subordinate judges. Though personally I have no objection to the suits being transferred to assistant judges or 1st class subordinate judges, if the public sentiment has to be taken into consideration, then I think the suits should lie in the district court or the assistant judge's court.

Q. Why do you consider that the public would think that a 1st class or 2nd class subordinate judge will not give a just decision, because the Collector or the assistant collector or some public officer is a party ? Don't you consider that to be an unjust aspersion upon the character of our subordinate judges ?

A. I have said that in many cases they may be transferred to the 1st class subordinate judges—land acquisition cases and other cases.

Q. Do you really consider that the public feeling is so strong ? Is it because they think that the subordinate judges will not give them justice ?

A. There is a strong feeling on that point.

Q. Is there anything to justify that feeling ?

A. I cannot say there is anything to justify it. I think 1st class subordinate judges would decide as impartially as the district judges.

Q. And not the 2nd class subordinate judges ?

A. I don't think so.

Q. Are you aware that in all other provinces of India very large claims are decided by munsifs and sub-judges against the Secretary of State and they would as readily pass a decree against the Secretary of State as against any other person ?

A. I am aware of that.

Q. Why then should you brand our subordinate judges as being less likely to do justice as between the subject and the Crown than the subordinate judges in all other provinces of India ?

A. That is my opinion. The 2nd class subordinate judges should not be entrusted with that power.

Q. Are you aware of the practical inconveniences caused by restricting the jurisdiction in that class of cases to the district court alone ?

A. I am aware of that.

Q. What are those difficulties ?

A. The work is congested in the district court. Then, there is also another consideration that in suits against the Secretary of State if they are to be tried by the 2nd class subordinate judges, the people will not have the best legal advice in the subordinate courts. In suits against the Secretary of State it is the desire of the people to have the best legal advice.

Q. In subordinate courts suits of very large claims are tried and people, when they find it necessary to get best legal advice, take the pleaders from the headquarters.

A. That will mean more money.

Q. You think that people will prefer to have the trial of their suits delayed rather than pay more money and get pleaders from the headquarters ?

A. Yes.

Q. With regard to the trial of suits in district courts now against the Secretary of State don't you think the Government are very much to blame in connection with the time taken to put in written statements ?

A. There is one consideration which has to be taken into consideration. When the Government is a party, notice of the claim is given to the legal department. Then they call for a report from the different officers concerned and see whether the matter should be compromised or should be fought out. If contest is decided upon, they file the written statement. But it takes a good deal of time.

Q. It takes as much as 6 months to a year.

A. I can't say. You know much better than myself. The Government pleader in the district court would have been in a better position to give evidence on that point.

Q. You may take it from me that it takes as long as 6 months to file a written statement on behalf of the Government. Is there no way to prevent this enormous delay ?

A. I do not see any way unless it is suggested to me.

Q. You are aware that the Government do receive a notice of suit.

A. Yes, under section 80, C. P. C.

Q. It is only two months after that a suit can be filed.

A. Yes.

Q. If the Government take steps to prepare written statements as soon as the notice is received, will not a large amount of delay be saved in this manner ?

A. Many cases are not filed even though notice is given. They are mere threats. Supposing in 90 per cent of the notices, suits are not filed, and the whole machinery is set in motion and reports are called for, then it is only a waste of time. That is a strong objection to sending for reports as soon as the notice is given.

Q. There is certainly some force in your suggestion.

A. Yes.

Mr. Justice Stuart.—*Q.* But why should these simple matters take as long as six months ?

A. I am not in a position to say that notices which are sent by the Government to the legal department are kept there uncared for.

Dr. DeSouza.—I had to deal with these matters very severely when I was a judge at Ahmedabad. I used to say that the written statement should be sent in within three months otherwise the suit would be heard *ex parte* and I assure you that whenever I acted in this manner, the machinery was quickened up. It seems to me that both the judges and the Government are responsible for that. You would have realized that judges, at least some of them, are reluctant to decree these matters against Government on account of failure to file the written statement. I think the whole matter can be quickened up if the legal department takes a little more attention ?

A. Most probably the delay is due to the delay caused by the revenue authorities. The thing is first referred to the Collector who refers it to the sub-divisional officer, then it is referred to the mamladar and so on and then the reverse course takes place. That is the usual procedure.

Q. Then taking the reverse side of the picture, you perhaps know that when the Government or the Secretary of State is the plaintiff, they insist upon the written statement being put in without delay. They say that the defendant should put in his written statement as soon as possible.

A. I am not aware of that because I have not conducted suits on behalf of Government in the lower courts.

Q. You may take that from me.

A. Yes.

Q. With regard to land acquisition proceedings, you say that appeals are generally argued by you.

A. Yes, except in some cases in which the Advocate General appears.

Q. Have you got any suggestion to make with regard to the disposal of land acquisition proceedings in the district courts ?

A. They may be transferred to the first class subordinate judges in my opinion and they are transferred, as a matter of fact, to assistant judges up to Rs. 10,000 and also to joint judges.

Q. But those officers are part and parcel of the district court ?

A. Yes.

Q. You are not opposed to the suggestion that they should be transferred to first class subordinate judges ?

A. No.

Q. You have dealt with a large number of appeals from land acquisition proceedings ; do you now consider that the trial of these land acquisition matters requires a certain amount of special knowledge ?

A. District judges or first class subordinate judges do not require special knowledge because they get experience and training in these matters as they try them.

Q. But in very very difficult cases such as acquisition for Tata Works or for the development of Bombay—these are of course very very big claims—do you not consider there is necessity for special knowledge ?

A. I have no reason to find fault with the judgments that are delivered.

Q. These proceedings are dealt with by district judges and assistant judges and a suggestion has been made by one of the Judges of the High Court that in districts where land acquisition proceedings are very important and very numerous such as Thana and Poona and Ahmedabad, a special officer, who has experience in these matters, should be appointed to deal with them. He should be sent from district to district and should try these cases only. Would it not be better if this arrangement can be made, and I think such officers can be secured, and there are one or two judges who have really acquired a good deal of knowledge ? Would it not simplify the work as well as improve the quality of it ?

A. I have not found any fault in the judgments delivered by district judges and assistant judges, but, if for the sake of convenience such an officer is desirable, I have no objection. It will be desirable to have expert rather than subordinate judges who try to learn these matters in each district where they go. But the suggestion would mean extra cost.

Q. No, it would not in places like Poona, Ahmedabad or Thana. At such places special officers have to be sent to dispose of these matters alone and at Thana an assistant judge had to be sent to do this work for three years. I think there is the necessity for such an officer at least for four or five years to come ?

A. At present there are many land acquisition cases, but I am not quite sure whether in future the number will be the same as at present.

Q. At present there is enough work to occupy a whole time judge especially in Thana, Poona and Ahmedabad.

A. Yes.

Q. In fact there is one officer doing nothing but land acquisition cases in Thana, *i.e.*, Mr. Sanjana. He has acquired great experience but at the expense of the cases which he tried in the beginning. The same officer, after finishing his work there, can be sent to another place ?

A. Yes, that will be a better arrangement than the investment of second class subordinate judges with these powers.

Q. Then you say that the system of recruitment has recently been changed. Will you just give an idea as to the system that prevailed before and that prevailing now ?

A. Second class subordinate judges were recruited from men who were in practice for three years or who were holding certain qualifying posts. That was the previous arrangement. Some of the appointments were made by the Government but I do not know how they were made. Now the qualifying posts have been abolished and pleaders or lawyers of three years' practice are appointed as subordinate judges. The recommendations are made by a committee appointed by the Government of which the Chief Justice, one judge of the High Court and some members of the Bar are members. These recommendations are sent to Government and the Government make appointments.

Q. Does the present method give satisfaction ?

A. So far no appointments have been made and the time has not been enough to judge their work.

Q. A suggestion was made to this Committee that the three years' practice is too short to enable the district judge or the High Court to judge whether really the candidate is a fit person and that therefore the period should be extended to five years ?

A. I would be in favour of five years, but at the same time the age limit should be raised from 30 to 35. Now the age limit is 30 and it would not be possible for a man to have five years' practice and then join the service at the age of 30. I would therefore recommend that the age limit should be raised to 35.

Q. If that suggestion is accepted, do you not think that a man after five years' practice would get a fairly lucrative practice and it is just possible that he may not accept the service ? Would not that danger lie ?

A. Yes, that is all right. Some people are able to earn more than the pay of a subordinate judge after five years' practice and they may decline the offer.

Q. Do you think that a man, after five years' practice, is able to earn more than 300 ?

A. That depends upon the individual. A brilliant man may be able to earn more than Rs. 300 per mensem.

Q. So that it is just possible that such a man may not accept the offer ?

A. Yes.

Q. Do you think that there is a better chance of getting hold of a man when he has three years' practice and when his prospects are not certain than to offer him the appointment after his five years' practice ?

A. Yes, that is so but he would not have that experience which a man after five years' practice would possess.

Q. That certainly is true, but would you be in favour of getting the men after three years' practice and then giving them a certain amount of training ? At present no sooner is a man appointed than he is trusted with cases up to Rs. 5,000 without any preliminary probation or anything of that sort.

A. I think such a recommendation is necessary. If he is taken after three years' practice he should attend some court, but if he is taken after five years' practice, I don't think any preliminary training is necessary.

Mr. Justice Stuart.—Q. How is he in a position to know anything about office work ? He may know law and may be able to decide cases, but how does he know to arrange his work.

A. I think he can arrange his work.

Q. How ? Do you think that this work can be done without training ? If an outsider is appointed manager of a firm do you think that he will be able to do the work without having any training in the methods of the office ?

A. He would require some training and I think a candidate should be attached to the court of a district judge and subordinate judge 1st class.

Dr. DeSouza.—*Q.* In what capacity should he be posted there ?

A. He should first see how the work is done and sit with the judge and then he should decide such cases in which the issues are framed by the senior subordinate judge.

Q. That is really done now. He is appointed a joint subordinate judge and only those cases are sent to him in which issues have been settled. Do you think that it would be better if he should sit with the first class or second class subordinate judge and should record the evidence and also judgment and then should submit the same for approval to the presiding officer ?

A. That would be a better course.

Q. The same system, you think, should be followed as the local Government have introduced for Civilian officers. You see they sit in the High Court with the Judge and then submit their judgments to them for approval. Do you think that a similar system would be a useful one ?

A. Yes.

Q. I see you were speaking something about the High Court, *i.e.*, congestion of work on the Original Side—I suppose you don't practice on the Original Side ?

A. No, I am not allowed to do so.

Q. Are you in favour of extending the jurisdiction of the Bombay small cause court ?

A. Yes, there is a Bill at present and I had an occasion to give my opinion on that and I think you would also have given your opinion. My suggestion runs on the lines of that Bill.

Q. Would you prefer a civil city court ?

A. Yes. That was not a question in your questionnaire and therefore I remained silent on that.

Mr. Gupte.—*Q.* Then you are aware that the work of the small cause court is very much congested, so much so that they had to employ an additional judge ?

A. Yes.

Q. And you are also aware, I believe, that in the extended jurisdiction, *i.e.*, in cases over one thousand rupees, the parties have to go to the court a number of times with the result that some of them prefer to file their suits in the High Court rather than to go to the small cause court.

A. I do not know about that, and if I were the plaintiff I will never go to the High Court on the Original Side.

Q. Can you give me your reasons ?

A. The Original Side is already congested.

Q. If you go to the High Court, the cost to litigant is less than it would be if he were to file his suit in the small cause court ?

A. Only the court costs and not the office costs.

Q. Take the whole costs. I shall give you a concrete instance. If you have a plaint for four thousand rupees in the small cause court the court fee is more than two hundred rupees, and the pleader's fee is about one hundred rupees, and in addition to that there is the process fee. On the Original Side of the High Court, if it is a summary suit, the ordinary expense comes to two hundred rupees, because no counsel has to be engaged. If it is a short cause, and there is no difficulty of service, the whole bill does not exceed Rs. 345. Probably you are aware that on Tuesday we get a number of short causes, and about sixty per cent. of them are *ex parte* cases. If your proposal were given effect to for the sake of contested matters, you will be depriving sixty per cent. of the litigants of the cheap decision which they get in the High Court. Have you considered that point of view ?

A. I considered that very fully, when I was a member of the Bar committee, and I came to a contrary conclusion. I adhere to that conclusion even now and I have no reason to change that.

Q. Would you take it this way. I take it that the point of view from which you want the extension of the jurisdiction of the small cause court, is the question of the cost to litigants ?

A. Yes and the speed also.

Q. And so far as the small cause court is concerned there is more delay than in the High Court.

A. No. In the small cause court the suits are decided very speedily. They are all disposed of in one year.

With regard to the extension of jurisdiction of the small cause court, I would suggest that there should be an appeal to the High Court over one thousand rupees.

Chairman.—It is proposed that there should be an appeal above two thousand rupees, and you think that the present extended jurisdiction should be subject to an appeal to the High Court.

A. Yes.

Mr. Gupte.—*Q.* Would you do away with an appeal to the full court ?

A. Yes. Under one thousand rupees it may be to the full court.

Q. Would you be in favour of the suggestion that suits between two thousands and five thousands should be tried in the High Court and that pleaders and attorneys should be allowed to practise there without any restriction ?

A. I should think that there should be a city civil court and failing that extension of the small cause court jurisdiction. There is already enough congestion on the Original Side of the High Court, and that should be relieved.

Q. That might be done by appointing an additional Judge in the High Court itself ?

A. Where he sits is a matter of indifference to me. He may sit in the High Court or the small cause court, or in any other building, but there should be a city civil court.

Q. But if he sits in the High Court, the administrative machinery will be only one ?

A. Then he should sit in the Presidency small cause court.

Chairman.—In Madras, I understand, the judge of the city civil court is a gentleman who is paid about twelve hundred rupees. Do you think that that is sufficient ?

A. I do not think so.

Q. Would you like to see him paid, at any rate, not less than the chief judge of the small cause court ?

A. Yes.

Dr. DeSouza.—*Q.* How would you recruit him ?

A. He should be recruited from the Bar.

Q. Necessarily from the Bar ?

A. I should think so.

Q. Why should you close that to the subordinate service ?

A. Because suits in Bombay require a man who has knowledge of work in Bombay. He is required to know the accounts, especially the Gujrati accounts.

Q. The subordinate judge of Ahmedabad probably requries as much knowledge of commercial work as a judge in Bombay. There is room, with Bombay city civil court, small cause court, Ahmedabad subordinate judge's court, the Karachi Court and to some extent the subordinate courts at Poona, for a cadre of commercial judges trained on the commercial side.

A. Yes.

Q. And also at Karachi ?

A. Yes. But if subordinate judges are to be appointed, they should be recruited from the Bar.

Q. But with all that, you insist upon a special kind of training.

A. Yes.

Q. I have heard very often that subordinate judges who are very able, and have been trying all their time suits on mortgage, when sent to Ahmedabad have decided most intricate points on *c. i. f.* contracts and bills of exchange, and intricate questions arise specially when interlocutory orders have to be passed. Very often similar things would happen also in the city civil court. You consider that about two thousand rupees a month will be a decent salary for the judge of the city civil court ?

A. That shall be the minimum.

Chairman.—*Q.* Then, what is your view as to whether the extended jurisdiction should be concurrent or exclusive ? I understand the Government's present bill does not compel anybody but gives the plaintiff the option, giving to the High Court a right of transfer.

A. Yes, with some discretion as to costs if it is filed in the High Court.

Q. What do you think of that ? Would you introduce the experiment in that form or in the form of requiring people to bring it to the lowest court subject to a right to apply to the High Court for transfer ?

A. I would be in favour of giving exclusive jurisdiction.

Q. Subject of course to the right in the High Court to transfer only for strong reason. Unless they show cause to the contrary, they should give security for costs in the event of a transfer.

A. Yes.

Dr. DeSouza.—*Q.* I think you have a good deal of appellate work in your private capacity.

A. Yes.

Q. Are there a good many 2nd appeals from the district courts ?

A. Lately I have less than before.

Q. Anyhow, I think you have a considerable number of appeals.

A. Yes.

Q. In this province I suppose you are aware that in the year 1922 there were 727 second appeals, out of which 289 were dismissed under Order 41, rule II. Out of those that were admitted, 24 only were those in which the decrees were modified or remanded and 65 decrees were reversed. That means that in about 15 per cent. out of the appeals that were admitted, the High Court did interfere in any way by reversal or modification or remand. Therefore, there were 85 cases out of every 100 in which the respondents were dragged to the High Court and made to incur heavy expenditure, which as you know, is not refunded to them and they have been kept waiting as long as 2 or 3 years to realise the fruits of their decree. Don't you consider that you must do something to prevent these respondents being treated in this manner ? What safeguards would you suggest ?

A. I should rather think that Order 41, rule 11 is a sufficient safeguard.

Q. Order 41, rule 11 disposed of 289 out of 727 appeals. There still remained 612 appeals on the file, out of which in the end the judges interfered in any way in only 89. In the remaining 513 cases the decrees of the lower court were affirmed.

A. That is because the records are not here when the admission is made. Secondly, the court has not the advantage of hearing the arguments of the respondent at the time of the admission. Therefore, more cases are admitted.

Q. I take it then that the procedure in admitting the appeal should be more stiffened.

A. At least so far as the Bombay High Court is concerned, I can say that the admission is very strict.

Q. But that cannot be, if these figures are correct.

A. The reason is that at the time of the admission the court is not in possession of all the facts and has to change its view after hearing the argument of the respondent.

Q. Under the law as it stands at present, there is nothing to prevent the court from sending for the records before admitting the appeal ?

No reply.

Mr. Justice Stuart.—Q. Anyhow these respondents are kept waiting for two years for no reason at all. They are very often put to heavy out of court expenses. Don't you think that something ought to be done to remove that ?

A. I don't think any suggestion can be adopted without the sacrifice of a certain amount of confidence of the people in the High Court.

Q. What about the respondent's confidence in the High Court ?

A. There are several cases in which people who are respondents this day become appellants to-morrow. They would not complain.

Chairman.—Q. The real thing is to try if possible, without excluding the right case from the High Court, to weed out a case which is not to succeed in the end. You give a man a right of appeal under section 100. Then under Order 41, rule 11 whether it could be summarily dismissed. Don't you think that something has to be done from the point of view of the respondent ? The appellant has got to show a special reason, something wrong in the judgment of the court below, some special defect or some special reason why the respondent should be further harassed after having had two trials.

A. I think, with great deference, that when appeals are admitted, the appellant succeeds in convincing the court that there is a good point of law. It changes its opinion after hearing the respondent.

Dr. DeSouza.—The point is whether the lower court's decision is contrary to law and not whether there is a point of law.

A. I should think that in the Bombay High Court they do apply a very strict standard for the admission of second appeals.

Chairman.—Q. You think they don't admit an appeal unless they think that there is a *primâ facie* case that the court below was wrong ?

A. Yes.

Mr. Justice Stuart.—Q. Don't you agree with me that, though the Bombay High Court is doing its best as regards admissions, there must be something wrong in a system which permits so many people to be brought to court for nothing ? Are we to go on wasting time for ever ? Cannot somebody try and devise a good method by which a good appeal can come to the High Court and a bad appeal cannot ?

A. As I said at the time of admission, there is Order 41, rule 11.

Q. Do you consider Order 41, rule 11 a real remedy against this evil ?

A. I should think it is a sufficient check.

Q. A remedy, which has been suggested is to establish benches whose decisions should be made final on facts and on law with the right to state a case to the High Court. Whenever that suggestion is made, the immediate reply that is given is that people have confidence only in the High Court . Have you any other objection ?

A. I have considered all these points but I am opposed to this suggestion on these grounds :—

(1) The right of final appeal to the High Court should be allowed to litigants in this presidency and they should not be deprived of that right.

(2) First class subordinate judges will not, like the High Court, inspire confidence in the minds of the public.

(3) Order 41, rule 11, is a sufficient check on frivolous and idle appeals.

(4) The benches of subordinate judges are likely to give conflicting rulings in different districts on important questions of law and their decisions would not be authoritative and binding.

(5) If they differ in opinion, how is that difference to be settled ?

Q. If they differ in opinion that difference can be settled by the high court, because in that case a right of appeal is allowed. Do you think that they will differ in many cases ?

A. There are many important questions of law on which there may be difference of opinion.

Q. Do you think that very intricate and important questions of law are likely to arise in cases under Rs. 1,000 ?

A. Yes, there are many cases in which important questions of law arise. My sixth reason for opposing this suggestion is that it will not be desirable to give finality to their decisions on points of law in the mofussil where it is not ordinarily possible to get the best legal advice and where there is lack of good libraries. And lastly this suggestion will involve more cost to the State and also to the litigant if he wants to get the best legal advice. If there is an important question to be decided, the man will have to take a competent legal adviser who will have to be paid heavily. There are 16 districts here and it means that Rs. 16,000 will have to be spent on these benches because there will be two first class subordinate judges in each district on Rs. 500 each. Rs. 16,000 means four judges of the High Court.

Mr. Gupte.—Benches will not be established in each district, but for a group of districts.

A. Supposing four benches are established instead of four High Court judges, it would mean two High Court judges. Then taking the point of Dr. DeSouza that the right of appeal should be curtailed because the percentage of reversal is not small, I think it is not a safe guide to be relied on. I think subordinate judges write very good and painstaking judgments only because there is a right of appeal, and if that right is interfered with deterioration of work of subordinate judges will be the inevitable result. Therefore if the argument is correct the right of appeal in criminal cases ought also to be interfered with. I will refer to page 47 of the administration report of 1921-22. Out of 780 criminal appeals 504 were confirmed, 18 were reversed and 80 were modified, so the percentage of reversals is very small. As nobody would suggest that the right of appeal in criminal cases should be curtailed, similarly the right of second appeal should not be curtailed.

Dr. DeSouza.—*Q.* Then there is another point. You are in favour of introducing the system of registered addresses.

A. Yes.

Q. The system would work in this way. When the defendant has been served, he will put in an appearance and then he will be asked to file his registered address, with the written statement, on which all future notices and processes of any kind will be served in the ordinary way, and if there is any change in his address, he will be required to intimate it to the court.

A. Yes.

Q. Would you be in favour of that suggestion ?

A. Yes, provided the right to change his address is given to the party.

Q. That right will be given, but it will be the duty of the party to keep the court informed of his changes.

A. Yes.

Q. Would you extend this registered address to execution proceedings also?

A. Yes.

Q. Some witnesses have told us that it will not be quite so safe because the execution proceedings last for ten to twelve years after the date of the decision of

the suit, and to say that the registered address given at the institution of the suit would remain the same will be rather not quite a safe proposition.

A. If you give the right to change the address, the difficulty vanishes.

Q. Is it not the practice in this presidency that clients give the address of their pleaders ? Would you make the address of the pleader sufficient address ?

A. I would not.

Q. If the party says that the pleader's registered address should be taken as sufficient address, would you take it as such ?

A. If the party says so, then I would have no objection at all.

Q. Under Order 3, rule 5 service on the pleader is sufficient.

A. Yes.

Q. Service on the pleader is considered as service on the party.

A. Yes.

Chairman.—*Q.* That was section 40 of the previous Code ?

A. Yes.

Q. So that there is nothing new in that ?

A. No.

Dr. DeSouza.—*Q.* I see you are in favour of awarding some deterrent costs in the case of an adjournment being granted at the request of one party.

A. Yes, if they are on flimsy grounds.

Q. You know that in the mofussil the court often gets a telegram from the plaintiff "seriously ill, can't attend, please adjourn." In such cases some of the subordinate judges think that to grant an adjournment is a necessary thing. I take it that this sort of thing should be discouraged by empowering the courts to grant adjournments by awarding somewhat penal costs. How would you fix those costs ?

A. I think that should be left to the discretion of the court who should decide this matter.

Q. Is there no such power given at present ?

A. No.

Q. Would you be in favour of having a rule like the one which is followed in the High Court that if an adjournment is granted, the party asking for it should pay four mohurs for the counsel and so much for the witnesses ?

A. I think it should be provided in the circulars rather than in the Civil Procedure Code and the amount of penalty should be left to the discretion of the High Court.

Q. You mean that a scale should be fixed.

A. Yes, by the High Court.

Q. You will agree with me that then a great many applications for unnecessary adjournments would be stopped.

A. Yes.

Q. That amount should be paid in court before an adjournment is granted ?

A. Within a certain limit of time, I think.

Q. Should that be included in the decree ?

A. No.

Q. Why ?

A. Because it takes very long to realize the amount.

Q. And also I think for the reason that our clerks are so inexperienced that they never look to the interlocutary orders but only write up the decree to conform to the final order that costs do follow the result.

A. I am not aware of that.

Mr. Gupte.—*Q.* In the mofussil pleaders do not get an extra fee for these adjournments.

A. No.

Dr. DeSouza.—*Q.* You mean for the motion to ask the adjournment.

A. Yes. On the Original Side in the High Court pleaders are paid but in the mofussil they are not paid anything and if Mr. Gupte's objection is that no costs should be ordered because no costs are incurred I will agree with him on that point.

Q. In some cases counsel come from Bombay or from the district centre.

A. In that case I think some costs should be allowed.

Q. In any case the subsistence money of the witnesses should be allowed.

A. Yes. There is a rule for the Original Side of the High Court that if an adjournment is given for want of translation Rs. 30 or 35 should be allowed as costs to the other party.

Chairman.—*Q.* Is there any reason why a pleader's time should be wasted by granting unnecessary adjournments and in such cases some costs must be awarded? I should think anything up to Rs. 20 at any rate should be allowed to the other party.

A. I should leave the amount to be fixed by the High Court in the civil circulars.

Q. But some small amount should be paid.

A. Yes. The High Court would be in a better position to decide the amount after consulting the district judges.

Q. There is no reason why a pleader's time should be wasted for nothing.

A. Yes. In a case where adjournment is asked for on false or insufficient grounds costs should be allowed to the other party.

Dr. DeSouza.—*Q.* Now apart from your suggestions made in your statement have you anything else to say which you would like the Committee to consider?

A. No.

Mr. T. R. KOTWAL, Judge, Court of Small Causes, Ahmedabad.

Written Statement.

1, 2, 3, 7. I subscribe to the proposition that "A statement of the average duration of cases is often deceptive." The decision of a few very old cases makes the average duration mount up though the majority of cases may have been decided in reasonable time. There is delay and avoidable delay no doubt, but a statement of average duration makes things look darker than they are.

One remedy to shorten proceedings is suggested by Mr. Justice Batchelor in para. 19 of his inspection report. It relates to the production of documents—O. VII, rr. 14, 18 and O. XIII rr. 1, 2. The prevention of receiving important documents in compartments must be secured, as much as the prevention of the recording of evidence piece-meal.

What the attitude of the High Court is as regards monthly returns and statistics of decided cases in the lower courts is clearly shown in paragraph 16, pages 14, 15, of Mr. Justice Batchelor's inspection report.

"All judges should keep constantly before their minds that it is work that counts and not the mere appearance of work: in other words, their merits will not be judged by the mere arithmetic of their periodical returns. We on the High Court are quite aware of the fallaciousness of mere figures. Therefore, where there is a heavy deposit of old cases, a judge's first concern should be to clear off that deposit; if, as usually happens, the old cases are heavy, the returns may, no doubt, look meagre for a few months but this may be easily explained in the remarks column, and the High Court will appreciate the position, not only without difficulty but with pleasure. It will, on the other hand, look askance at a numerically magnificent return coming from a court where there are large and heavy arrears."

It is this right attitude of the High Court rather than anything else that will cure the long duration of suits in all grades of courts.

If the rules laid down, in the chapter XX of the manual of civil circulars, by the High Court, for the superintendence of the lower courts, are reasonably carried out, there should be little room for complaints of protracted proceedings.

I think the observations made above apply equally to the standard of efficiency of an officer as regards amount of work done. The standard would vary with each court and district. This I think is a matter best left to the honour and self respect and self interest of the individual officer subject to the conditions and limitations noted above. Any attempt at standardisation must expose either the officer or the system of the administration of justice to public redicule and lead to absurdities not worthy of any civilised system of justice.

If rule 10 of chapter XX of the manual is carried into effect with intelligence and be made a living rule rather than a dead letter, I think no standardisation is required. Remarks in paragraph XXIII should be read here.

10. Under section 15 of Act IX of 1887, Provincial Small Causes Courts Act, the recent policy of the Government appears to be to extend the small cause jurisdiction of the first class subordinate judges to Rs. 1,000 as appears from the gradation list published monthly. The powers of the small cause court judge at Ahmedabad are also raised to Rs. 1,000 from Rs. 500.

13. In the Bombay presidency subordinate judges of all grades have been given powers under section 26 (1) of Act VII, 1889 by the Governor-in-Council, to perform the functions of a district court under Act VII of 1889 (*vide* local rules and orders volume 1, pages 461 to 463).

High Court circular No. 10 at page 160 of the manual bears on this point. The subordinate judges have powers under regulation VIII of 1827 to hear applications under section 2 of that regulation.

Probate matters and land acquisition matters can be heard by assistant judges, taken from subordinate judges and the number of assistant judges should be increased for this work. The Bombay Government has in the past appointed such assistant judges to dispose of the heavy arrears in land acquisition matters in the Ahmedabad district, and I did the work for two years. I did probate work and land acquisition work for over 7 years in different districts, as an assistant judge in name only, though all the while I continued a subordinate judge with the emoluments of a subordinate judge.

The public were satisfied with the higher designation and the revenue was benefitted by raising the status of a subordinate judge, without increasing the pay. I mention my own concrete case as it extends over a pretty long period of 7 years. My appointment was continued each time for a period of 6 months or so. Except perhaps myself all parties concerned were satisfied with this cheap arrangement.

The Bombay Government can appoint any subordinate judge of proved merit and ability to be also an assistant judge (*vide* local rules and orders, pages 18, 19 of Ed. of 1910.)

So officers of proved merit and ability are available for this work, under the statutory powers.

The public will be fascinated by the high sounding name and dignity of the officer but may perhaps be displeased if the higher work is entrusted to a mere subordinate judge. There is something in a name in the eyes of the public.

14. In the Bombay Presidency there is the system of appointing village munsifs, under chapter V of the Deccan Relief Act. The powers may be raised to 20 from 10 rupees as at present and suitable men may be appointed.

I have not heard any complaints against village munsifs.

15. On going through the second schedule to Act IX of 1887, I am not in favour of restricting the scope of the schedule. The suits mentioned therein mean longer hearings than in the cases at present heard by the small cause court. The

public is likely to be dissatisfied with the loss of the right of appeal that they will incur as the direct effect of the restriction.

Mortgage suits and partnership suits are not fit to be tried by a small cause court. Is a simple mortgage suit up to any money value to be heard or up to Rs. 1,000 ? What is small capital ? Up to Rs. 1,000 also or what ?

16. As far as the small cause court is concerned I believe the extension of Order XXXVII to suits mentioned in section 128 (2) (f) (i) will expedite disposal and discourage false defences. Care will have to be taken to curb the tendency of plaintiffs to exaggerate their claims. I would exclude clause (ii) from the jurisdiction of the small cause court.

20. I am emphatically against restricting the rights of second appeal, given by section 100 of Civil Procedure Code. The section is stringent enough, as will appear from the number of second appeals rejected.

I have practised in the High Court and I record this deliberate considered opinion as a lawyer and a citizen.

I will illustrate my view with a concrete instance as it has happened. An assistant judge disposed of two land acquisition matters involving the same law point. According to the Bombay Civil Courts Act, one case went in appeal to the High Court and one went to the district judge. The High Court ruled that the law laid down by the assistant judge was correct, whereas the district judge held that the law laid down by the assistant judge was wrong. When the two rulings, poles apart, were known, it created a great discontent. Such instances bring justice into disrepute rightly or wrongly, but to prevent this, the remedy is not to curtail the right of second appeal as it exists now.

23. I agree to the suggestion that in cases of rivision under the Provincial Small Cause Courts Act, the decretal amount should be deposited in court before a revision petition, is entertained but I would add that if a security is given for the amount, the petition should be allowed. My suggestion follows the proviso to section 17. I would suggest the amendment of that clause by including in it a revision petition to the High Court.

24. Extension of section 73 of Act XV of 1882 to provincial small cause court may tend to make justice more speedy and economical.

The saving in costs would be a great incentive to parties to give up frivolous contentions and compromise matters on reasonable terms. Many a time parties consider costs of a trial as a test of success and prestige.

I would recommend the extension of section 73 to all courts, even to appeals.

I would propose the amendment of the proviso to Order XIX, rule 1 by allowing affidavits, even if the witness is to be cross-examined. I follow this practice with the consent of parties and it is found to save much time, without leading to any injustice.

If small cause courts make more extended use of this power of ordering parties to make affidavits, much time will be saved. For instance in suits on khata, on bonds, promissory notes, other chities, for recovery of call money, for rent on written leases, on written accounts and similar ones if plaintiffs put in affidavits and submit the man making the affidavit for cross-examination if needed, much time will be saved. In paragraph 5 to the introduction to the manual of High Court circulars, it is remarked that " A summons for final disposal means that parties must appear with their evidence. There is a class of simple suits where each party may well be assumed to know exactly what is in dispute and what is to be proved or rebutted. Prompt disposal is so highly valued that in suits of this class the formality of framing issues before fixing a date for final disposal is dispensed with. The provisions as to settlement of issues do not apply to the small cause courts, (Order-50, rule 1 a, iii). The suggestion I make is practical. The amendment does not go against the theory of small cause suits. If strict or sufficiently strict adherence to the provisions of the Civil Procedure Code is enforced, trials should be speedy and economical.

The co-operation of the Bar and the Bench is a more powerful factor than any number of rules.

The profession gets into a groove of being time servers in the interests of the client, or so called interests, and there is an inclination developed to disregard the Civil Procedure Code if it can escape the vigilance of the court or the opponent.

Service of summons.

26. The adoption of the rule in section 106 of Act IV of 1882 in mofussil condition will lead to more *ex parte* decrees and subsequent applications to set them aside. In paragraph 1759 of second addition of Gour's edition of Act IV of 1882 are noted cases to show how section 106 is interpreted in Indian and English cases.

On a comparison of section 106 with Order 5, rules 9 to 20, I am not in favour of introducing section 106 procedure for service of process.

The proper remedy would seem to be to leave each High Court according to its experience and local conditions to frame rules under section 128 (2) (*a*), Civil Procedure Code.

Vigilant and constant supervision by the nazir and the judge over the work of the process servers is one remedy to cure the evil.

The inspection by the High Court judges and district judges have improved matters in the Bombay Presidency.

In rules 29 to 43, pages 230 to 235 of the Bombay Manual of Civil Circular detailed instructions are given to guide bailiffs and nazirs.

The Bombay rules and instructions are I believe enough if properly used to secure proper service of processes.

28. The experience in the Bombay Presidency is that service of notices and summonses by post is effective. The manual of circulars provides for this (*vide* No. 20 at page 5 and subsequent circulars issued). Revenue Department orders as noted in No. 38 page 232 of the manual require village officers to give every assistance to bailiffs when serving processes.

The ruling in 23 Bombay Law Reporter 908 serves as a great check to the abuse of postal service. If a party served by a post comes to court and denies that he was ever tendered the packet containing the notice or summons and swears to that fact, the service is set aside and *ex parte* decrees are set aside.

Order V, rules 25 and 26 (see manual rule no. 85, page 28) as to service out of British India are read at times by parties to exclude the operation of Order V, rule 25 where a Political Agent is appointed or a court established, under Order V, rule 26. This is a fruitful source of delay in cities like Ahmedabad.

My opinion is that the existence of Order V, rule 26 does not preclude a court from getting summonses and notices served by post in foreign territory.

In order to avoid one great cause of delay as is daily observed in commercial cities like Ahmedabad I suggest the amendment of Order V, rule 21 by the addition of the words " or by post " at the end of the rule. This can be done under section 128(2)*a* of the Civil Procedure Code.

Parties will often ask for summons by post and also through the court as is the practice at present.

29. I am not against the idea of a registered address.

30. Rules 30 and 37 of the Manual, chapter XIV, bear on this point. They do not support the suggestion. It requires the bailiff to exert himself to the utmost before he seeks the help of the party or pleader.

Settlement of issues.

31-32. These points go together.

I think the instructions in paragraph 26 to 29 of the manual of the civil circulars of the Bombay High Court are enough to lead to the proper framing of issues.

Paragraph 3 in the introduction to the manual also gives instructions on the point and shows how bad issues can be a fruitful source of delay and injustice.

The inspections in the Bombay Presidency by the High Court judges have improved matters as to the application of Orders 10, 11, 12. The use of these orders

depends upon the Bar and the presiding judge. Mr. Justice Batchelor described the judge as *dominis litia*. The co-operation of the Bar and Bench or the rigid observance by the judge of these orders is the only remedy. The personal factor will count. The man behind the gun and not the gun is a rule equally applicable to the judges and the Bar ; mere good codes will not improve the administration of justice. The Bar and the Bench must see that the rules of law are faithfully carried out in practice.

I refer in this connection to paragraph 1 of Mr. Justice Batchelor's report, on the inspections of courts. I assisted him in the work of inspection (March 1913).

(1. The districts may be congratulated on the marked improvement which is noticeable in all directions since the last inspection by a Judge of the High Court. It is clear that Mr. Justice Heaton's instructions have been carefully attended to, and the result has been very decided progress in all ways. The general provisions of the Civil Procedure Code are now understood and enforced ; the distinction, emphasised by Mr. Justice Heaton, between the preliminaries to the hearing and the hearing of a suit is commonly observed ; the tendency to record evidence piecemeal has been visibly checked ; and adjournments are now rarely granted as of course. All this is matter for gratification).

As suggested by Mr. Justice Batchelor I think the party not following the provisions of the Orders X, XI, XII should be saddled with costs, for his default (para. 6). Mr. Justice Batchelor's remark about issues in paragraph 16 are worth quoting :— Where issues are framed or an order is made in reference to some section of an Act, the phraseology employed should follow faithfully, even slavishly the exact words of Act. Lord Bowen's advice (to go back in a humble spirit to the words of the statute) would be found perpetually useful, etc.....

High Court circular No. 33 in the manual is also important on the question of framing issues (page 8).

33. Examination of parties.

The proposal is contrary to the provisions of the Civil Procedure Code.

It is directly opposed to Order XVIII. The great use and importance of the Order is pointed out by Mr. Justice Batchelor in paragraph 17 of his report.

(17) There appears reason to believe that the provisions of Order XVIII, rules 1 and 2 are frequently overlooked. Yet these provisions are very important and convenient. They prescribe the manner in which pleaders should conduct an original suit. The actual method will depend on which of the two parties is entitled to begin. Assuming that that party is the plaintiff, then it is the duty of the plaintiff's pleader to begin by opening his case ; that is to say, he should lay before the judge, tersely but completely, the exact nature of the claim made ; the facts which he hopes to establish by his evidence ; the general character and bearing of that evidence ; and, if any proposition of law is involved, a clear statement of that proposition together with sufficient reference to any reported decisions which go to establish the proposition. Care must, however, be taken to see that any decisions quoted really bear upon the precise state of facts which it is hoped to prove, and no case should be cited without a clear grasp of the facts on which the decisions proceeded. To this end the case should be studied as a whole, and the practice of relying on mere head notes must be sternly discouraged. When the plaintiff's pleader has finished his opening, he calls his witnesses ; that being done, he closes his case. It is then the defendant's pleader's turn to open his case, which he will do in similar manner to that already indicated, pointing out clearly the state of facts and if any law is involved the propositions of law on which he relies. He then examines his witnesses, and thereafter addresses the court generally on the case, submittting his arguments in the light of the evidence on both sides. Then the plaintiff's pleader is entitled to general reply, in which he will review the evidence with reference to his opening and will endeavour to refute the defendant's contentions. Then nothing remains but for the court to give judgment.

It is eminently desirable that the courts should insist on the following of this procedure, and on the abandonment of the vicious practice under which the pleaders

begin forthwith with their evidence and do not make any opening at all. For, the result of this practice is that the trial proceeds and the witnesses are examined before the presiding judge has become fully aware of the nature of the case in support of which the witnesses' examination is made; whereas if the Code be followed, the judge knows exactly the case which is sought to be proved, and is thus placed at great advantage both in appreciating the evidence as it proceeds and in checking irrelevant or prolix examinations and cross examinations.

The proposal in question 33 will lead to perjury and manufacturing of evidence. It is opposed to the very theory of the Code. The mischief of recording evidence piecemeal will not be remedied by the proposal. Irrelevant evidence and unnecessary witnesses would be prevented by strictly following Order XVIII.

I am opposed to the proposal.

The practice existed in the Bombay Presidency in some courts but in the inspection by Mr. Justice Heaton in 1907-08 when I assisted him, I raised the point and the practice was stopped.

If all preliminary matters, as directed in High Court circular No. 34 (page 9), are disposed of, the hearing will be short and speedy, as is also remarked in the important circular No. 144 (page 42).

34. Order 16, rule 16, is carried out. High Court circulars rules 61, 62 and the form prescribed are found to be sufficient in practice.

I refer freely to the manual as I assisted Mr. Justice Heaton in the preparation of it.

35. The remedy I suggest for reducing the number of witnesses is to follow the Code of Civil Procedure, and further to impress on parties and pleaders that it is the quality of the evidence that counts and not the number of witnesses. One, which I have successfully tried always is, to make pleaders open the cases as required by Civil Procedure Code, and argue the cases, in the order prescribed by the Code, and further to utilise all the provisions of the Code to collect the materials as allowed by law, before the actual trial begins. The High Court insists on this circular; No. 144 is very important in this respect (*vide* manual, page 42). Piecemeal production of documents and recording oral evidence in compartments is a sure way to the multiplicity of witnesses. Insisting upon the production of the list of witnesses checks the number. If a fresh list is given the party should be asked to explain the cause of omission from the prior list. The party may be asked as to the points on which a witness is to be examined. The pleader should be asked to begin with his best witness first, than the next best and so on. This also curtails the number of witnesses. If the powers of the court under section 30 of the Civil Procedure Code are fully utilised, the number of witnesses dwindles down.

In this connection, the remarks of Mr. Justice Batchelor as to the importance of opening a case and its result deserve to be widely known, I quote them fully :—(*Vide* paragraph 17 of Mr. Justice Batchelor's Report).

The interpretation put on old sections 156 and 159 now Order 17, rule 1 and Order 16, rule 1 as also old section 181 now Order 18, rule 4 gives the litigants a right to ask the court to record the evidence of witnesses in attendance (*vide* printed judgments for 1890, page 333 and P. J. 1893, page 419 Setalwad's digest, page 147, 148).

Witnesses are kept in attendance without service of summonses and the pleader decides whether he should take more witnesses or not after seeing how he has fared with the witnesses examined by him. The words " until all witnesses in attendance have been examined " in Order 17 proviso have caused the difficulty. Addition of some such words as " already named or if not named and entered in a list of witnesses filed in court, with the special leave of the court " may to some extent check the number of witnesses. This may serve as a check to concoction of oral evidence as case goes on. The absence of a rule as to the time when parties must disclose the names of their witnesses is responsible for a larger number of witnesses than the justice of the case requires. At present the judges are at the mercy of the parties.

A rule as to witnesses on the analogy of Order 7, rule 14(2) and rule 18 and Order 13, rules 1, 2 in a proper form will I, believe, go a long way.

Rule 35 at page 9 of the manual suggests a half hearted measure on the point. A new rule under the Code will have to be made to change the language of the Code and get over the effect of the rulings of the High Court, I have referred to.

36. Affidavits.

Section 30 and Order XIX refer to affidavits.

As noted in answer to question 24, I suggest an amendment to the proviso of Order 19, rule 1.

I do not agree to the imposition of special costs. *Viva voce* examination in court has its own benefits and a party need not be taxed for wanting to have that procedure in particular cases.

With this modification I am for the suggestion.

In the Bombay Presidency affidavits are encouraged (*vide* manual page 44, rule 148 (H)).

38. Section 128 (2), clause (f) may be extended to the subordinate judges' courts in the districts towns to start with, and extended to other courts after some trial and experience.

Section 7 of the Deccan Agriculturists Relief Act conflicts with this procedure and form 4 in appendix B and the agriculturists may have to be excluded from the application of Order 37.

47. Commissions.

The rules in the manual Nos. 43 to 54 (pages 12 to 18) if observed need lead to no avoidable delay.

The method of interrogatories may be good in some cases but not in all.

The matter is best left to the discretion of the presiding judge.

48. Adjournments.

Rules for the guidance of courts on this point are laid down in the manual (pages 29, 30). Nos. 93 to 100 and 107 require a judge to note the reason of the adjournments.

No rules appear to have been framed by the Bombay High Court under section 31 of Bombay Pleaders' Act 17 of 1920, clause 1 sub clause (*f*) about taxation of costs between party and party and there is no special rule as to costs in applications for adjournment. A practice has grown to allow costs to the opponent if he presses for costs of the day and the expenses of the witnesses for the day, in cash, irrespective of the result of the case. This has satisfied parties.

Order 17, rule 1 refers to the powers of the courts as to adjournments. Mr. Justice Batchelor said in (1913) " adjournments are now rarely granted as a matter of course." This improvement has not been lost.

49. Order 17, rule 1 refers to the hearing of the case from day to day. In paragraph 19 of his report Mr. Justice Batchelor said:—It is a matter of congratulation that the old practice of hearing oral evidence in compartments has been almost wholly abandoned." I see no reason to believe that the Judges have reverted to the old practice.

I did appellate work since 1915 and I can say that the improvement is not lost.

The observance of the rule No. 144 at page 42 of the manual as to the two stages of a contested case enables judges to hear the evidence easily from day to day than when that rule is not observed (*see* also circular No. 34, page 9).

50. This rule (rule 10 of chapter XX of civil manual) refers to a scrutiny of the causes of delay if any in the lower courts and measures to be taken to avoid delay in the procedure of that particular officer.

Chapter XX of the manual makes the High Court and the district judges responsible for " expediting the course of litigation according to provisions of the Civil Procedure Code."

It was for this reason that the Bombay High Court sent High Court judges on tours of inspection. These tours are not barren of results. The reports of these tours show the marked and steady and continuous improvement in the Bombay Presidency.

The Bombay High Court does not appear to have attempted to do the impossible in fixing a standard of efficiency as regards the amount of work done. These remarks may be read as part of paragraph 1.

53, 54, 55. Execution.

I agree.

56. It may be noted that old section 257 A is not reproduced in the new Civil Procedure Code. Creditors will get bonds for the unpaid portions of their decrees and there is very little chance of a judgment debtor getting relief. Records of court will get relief but ultimately litigation will not diminish in volume. The proposal is against the experience under the D. A. R. Act, Section 72. By that section periods for bringing suits were enlarged to prevent creditors from capitalising interest at short periods and the change operated in a contrary direction. I have serious doubt about the good results of proposal (*a*).

The same about (*b*) and (*c*).

It has been ruled in Bombay that even if a decree be time barred the right under it is not barred, and that if a time barred darkhast is allowed to be executed, the plea of limitation cannot be taken in subsequent darkhast; all this shows that there is an equity in favour of the judgment creditor and mere technical rules should not come in his way. In strict theory the proposal cannot be challenged, to allow creditor to execute the decree within the maximum period allowed to him. This will require a consideration of the proposal from the debtors' standpoint. The rule of certifying payment within 90 days would then become an absurdity. A rule on the lines of section 71 of the D. A. R. Act would become necessary (*vide* article 174 of the first schedule of the Limitation Act). Every time the creditor wanted to execute the decree, a notice to the debtor would be necessary. It is patent fact that creditors are not over anxious to give receipts and credulous debtors even now suffer by the fraud of creditors. The proposals I do not think would mend matters, so long as creditors are what they are and debtors are under their influence.

58. I have no objection to the modes of payments suggested. Parties even now send money to court through post in satisfaction of a decree.

59. Probably there is some misprint. I agree. I have no objection to modify the proviso if the equities between the parties at the date of the transfer are not affected by the transfer.

60. The proviso to Order 21, rule, 17 is so often violated by creditors that the law has in Order 21, rule 21 drawn attention of court to their duty. It need not be deleted. I cannot see the object of the proposal.

61. I am against the proposal, as the rule is a protective one.

62. In most cases interim stay in money decrees is sought to postpone the evil day. It is not necessary. Great discretion may be given.

63. I agree.

64. If creditors can furnish, at the time of attachment, all the information necessary for a proclamation of sale then I am in favour of the proposal. Even then it will only be a tentative proclamation of sale as the provisions of Order 21 will show. A copy of the proclamation may be given to the judgment debtor. It will increase costs of execution if costs of copy are allowed to creditors. If copies are made carelessly as they are likely to be, this would be an additional source of trouble.

Registration.

76. All future partitions of immoveable property should be evidenced by registered documents.

77. I do not favour the view of partnerships started with a capital of one hundred rupees or more being evidenced by a registered document.

I am in favour of registration of contractual partnerships with a capital of Rs. 500 and more.

78. There is conflict between the doctrine of part performance and section 54 of the Act IV of 1882 the Transfer of Property Act and section 7 of the Registration Act. The equitable doctrine works equity as all equitable doctrines do. The Bombay rulings have adopted the equitable doctrine. (40 Bombay 498 ; 41 Bombay 438 ; 18 Bombay Law Reporter 455 ; 24 Bombay Law Reporter 242 ; 25 Bombay Law Reporter 1027 ; 29 Bombay 590 ; 28 Bombay 472 ; 46 Bombay 722 ; (Laxman *versus* Ravji). 19 Calcutta Weekly Notes 250 P. C. (*vide* appendix I., 24 Madras 466). Section 10 A of the D. A. R. Act is an instance where the rigidity of law is relieved by Legislature to work out equity.

Razinama and Kabulyat under the Land Revenue Code and mutation of names give title.

79. If the discharge of obligations created by registered documents is made valid only if there is registered document to evidence it the creditors will take advantage of it to the detriment of illiterate and ignorant people. Even literate people will feel the trouble of registration to be wearysome.

The question of stamp is only secondary. Registration offices are in the Taluka towns only. The time and trouble are to be considered.

No new legislation would be required in the Bombay Presidency but, section 56 of the Deccan Relief Act has to be brought in force by the appointment of village registrars.

These officers have not been appointed for some years by the Bombay Government owing to financial reasons.

This section which was considered beneficial to agriculturists is now allowed to be obsolete.

It had its own use and abuse, but Government allowed financial considerations to prevail over the advantage to agriculturists.

80. The proposition was admitted in the case of agriculturists whether literate or not ; see section 56 of the Deccan Agriculturists Relief Act. If it was given up in the case of agriculturists, would it pay to make such a rule ? The experience gained under the D. A. R. Act as to village registrars will prove very useful. The correspondence and the Government Resolutions when the village registrars were abolished will be very useful. I believe the system was tried at least for 25 years before its abolition.

Sections 57 to 63 of the D. A. R. Act and notifications and rules under these sections will prove of use.

Bombay Government Gazette Part I { of years—1896, pages 971 ; 1178, 1902, page 251, 1903, page 1254 ; 1340.

See definitions of signing and documents.

In the absence of registration and signature, I have found even a clear thumb-impression useful.

Persons dealing with illiterate persons may be encouraged to get clear thumb impressions, not mere blots of ink, as we often get in courts.

The question of registration is bound up with finance. Unless there are conveniences in big villages for registration, the remedy may prove worse than the disease.

81. The Transfer of Property Act and the personal laws of the people will be disturbed to a great extent and in remedying one evil many more will crop up.

Mr. T. R. KOTWAL, Judge, Small Cause Court, Ahmedabad, examined on 2nd September 1924.

Chairman.—*Q.* You have been good enough to give us a very carefully thought out statement. I just want to take you on some of the larger matters. I see you

have quoted very excellent remarks from the inspection report of Mr. Justice Batchelor. Is that available in print anywhere ?

A. Yes. It has been printed and circulated to all subordinate courts.

Q. There are some excellent observations about the way in which the High Court will consider statistics.

A. Yes.

Q. As regards Probate and Land Acquisition matters you explain what has been happening in the Bombay Presidency.

A. Yes.

Q. Apparently there is plenty of power as regards the present laws. The Local Government can transfer some special work from the district judges.

A. Yes.

Q. You say for 7 years you did probate work and land acquisition work as an assistant judge.

A. Yes.

Q. Though as a matter of fact you were receiving pay as subordinate judge, you did that work for quite a long time. So far as Ahmedabad is concerned, there is a lot of land acquisition work.

A. I was specially deputed for that work for 2 years.

Q. What is happening to it now ? There is a great deal still there.

A. I don't know. But ordinarily it will be distributed among the assistant judges and joint judges.

Q. Is that work very difficult or fairly easy when once you get into it ?

A. I think it is not difficult. The Bar is a very efficient Bar and will help us a great deal.

Dr. DeSouza.—*Q.* Do you consider that an ordinary district judge or subordinate judge when first he is to try land acquisition cases of a complicated nature like those you have in Ahmedabad, feels the want of some previous training especially in appreciating the evidence of expert witnesses like the government surveyor ?

A. For myself, I found no difficulty.

Q. You think an assistant judge or subordinate judge without any training can tackle that work ?

A. Yes. Because the man who is taken up is a picked man. He is supposed to have that experience.

Q. He will have no experience unless he has tried those cases previously.

A. The general standing of the man is quite enough.

Q. After all valuing lands is an expert business. You have men like the government surveyor on the one hand and men who profess to be equal experts on the other hand. Don't you find it difficult without any previous training to deal with the conflicting evidence of those experts ?

A. With the two experts on two sides, I can myself judge.

Chairman.—*Q.* I see you have in this presidency some village munsifs operating under the Deccan Agriculturist Relief Act.

A. Yes.

Q. They have got powers, I think up to Rs. 10.

A. Yes.

Q. You think they might be raised to Rs. 20.

A. Yes.

Q. You have no complaints against them.

A. Yes.

Q. In this province, what sort of person is appointed a village munsif ?

A: He is generally chosen from a village or a taluka—a man who can read and write, generally an influential man in the taluka and selected on the recommendation of the subordinate judge or the mamlatdar. Both the judicial and revenue officers are consulted before his appointment is made.

Q. Is there a village munsif for each village or a group of villages ?

A. Not for each village but for a group of villages.

Q. Does it extend over the whole of the Deccan area or is it merely sporadic ?

A. It is confined only to the 4 districts to which the original Act was extended.

Q. Over those 4 districts, it is universal.

A. Yes.

Q. Who executes the decree of the village munsif ? How is it enforced ?

A. As far as I remember they are sent to the subordinate judge.

Q. As far as I remember I think they are executed by village munsifs.

A. In some cases we have received decrees of village munsifs for execution.

Chairman.—Then, you don't think that the schedule to the Provincial Small Cause Courts Act can be cut down.

A. No.

Q. You think that summary procedure can be applied in some cases in the small cause court.

A. Yes.

Q. I see you are against restricting any rights of appeal.

A. Yes.

Q. Did you examine the figures as regards second appeals in this Presidency ?

A. No. I have only given my personal experience.

Q. You give an experience of one case where some point was decided by an assistant judge in a land acquisition matter. There was an appeal to the district court and to the High Court and the district judge held that it was wrong and the High Court held that it was correct.

A. Yes.

Q. You don't object to the decretal amount being required to be deposited before a revision petition under the Small Cause Courts Act is presented.

A. No.

Q. Then, you say that the extension of section 73 of the Presidency Small Cause Courts Act might be a good idea.

A. Yes.

Q. What is the substance of it ?

A. When parties come to compromise the court fee is refunded.

Q. That is a provision that applies to suits under the Presidency Small Cause Courts Act.

A. Yes.

Q. Now, the Presidency Small Cause Courts have a separate schedule of costs.

A. Yes.

Q. The scale of fees in those courts is higher than under the Court Fees Act.

A. Yes.

Q. When the time of the court is not occupied in hearing the whole case, is the court fee refunded in full or in part ?

A. Only a half.

Q. When an actual trial is not required to be held or at any rate when the defendant comes in and confesses judgment, you think that the principle of refunding half the court fees might be applied in the Provincial Small Cause Courts.

A. Yes.

Q. That would tend people not to put hopeless defences.

A. I hold that opinion.

Dr. DeSouza.—*Q.* Would you apply the principle to *ex parte* proceedings also?

A. There of course my principle would not apply. The party does not come and consent. In an *ex parte* decree the party may afterwards come and fight out the application for execution.

Mr. Gupte.—*Q.* Would you prefer a separate scale of court fees for suits filed on summary procedure lines if the summary procedure is applied to districts like Ahmedabad ?

A. I think that will also facilitate matters on the analogy of Section 73. People would at once come in and confess when they see the advantage.

Q. Ahmedabad is a commercial city and there is a lot of commercial litigation and if summary procedure is applied in cases on negotiable instruments, it will facilitate litigation ?

A. It will, I think.

Chairman.—*Q.* Then you say that in the small cause courts more use may be made of affidavits. Do you think that will save time ?

A. I have given it a practical trial and I have seen that it saves time.

Q. But you will do that by consent of the parties ?

A. Yes, because the law does not allow me to do otherwise. If the plaintiff files an affidavit of his witness I make him send a copy to the defendant so that he may also be able to know what is the real point. Everything is done by mutual consent.

Q. Do you mean to say that it will also help the court in examination-in-chief ?

A. Yes.

Q. In what class of cases do you do that ?

A. In railway suits, suits on promissory notes and so on. Sometimes they do not follow *this* procedure and they insist on personal examination. When they do so, I do not press them.

Q. As regards the bad work of process-servers, you think the real remedy is vigilant and constant supervision by the nazir and the judge, while the nazir is unfortunately a busy man and cannot supervise the peons in a proper way.

A. But that difficulty can be solved by giving the nazir a deputy nazir. There must be supervision.

Q. A senior bailiff will have to be made to supervise the peons and it would involve a good deal of attention on the part of the judge.

A. Yes.

Q. In this presidency I understand there is no central nazir.

A. No.

Dr. DeSouza.—*Q.* You are a small cause court judge and you have got a separate nazir ?

A. Yes.

Q. All peons are under the control of the nazir.

A. They are under the registrar.

Q. The first class subordinate judge has got his own nazir and a separate set of peons serving under him and the district judge has also got his own nazir and a separate set of peons.

A. Yes, but the district judge can order anybody to serve his processes. My impression is that if he has got an insufficient number of peons, he can send anybody he wants.

Q. Who serves his processes outside the limits of the oridinary jurisdiction ? The first class subordinate judge has ordinary jurisdiction and special jurisdiction; who serves his processes in his special jurisdiction ? Supposing he has to serve a process outside his ordinary jurisdiction, will he send his process to the subordinate judge of that place ?

A. As I have not served as a first class subordinate judge, I cannot say anything.

Chairman.—Q. I see you say that as regards service, postal agency may be utilized, *i.e.*, more use may be made of the post office ?

A. Yes.

Q. When the summons has to be served on the defendant for the first time, you serve it by registered post and then you wait and see whether the defendant replies or not or whether he comes in or not and if you are not successful, what do you do ?

A. Then the party applies for service through the bailiff.

Q. But do you consider that service can be effected satisfactorily through post office ?

A. Yes.

Q. Then you say that there is delay when a summons has to be served out of British India. Will you just explain to the Committee, what you mean by that ?

A. Rule 25, Order 5, says that where the defendant resides out of British India and has no agent in British India empowered to accept service, the summons may be served on him by post, but Rule 26 says that where there is a political agent or a British Indian Court then the summons must be sent through the political agent, but in practice what the pleaders do is this. If there is a political agent, they generally do not avail themselves of the postal agency. What I submit is that the postal agency should also be utilized.

Q. Then you suggest that Order 5, Rule 21, might be amended ? In what way should it be amended ?

A. My point is this. Instead of one court sending the summons by post to another court, the party may send it by post to the defendant himself through the court.

Dr. DeSouza.—Q. Can you tell this Committee if the High Court in this presidency permits the use of the post office ? Is it only confined to the headquarters of the district judges ?

A. Now we have extended it to a number of taluqas. The number of districts has been extended. Formerly they were only Poona and Ahmedabad but now the number is extended.

Q. But it is not extended to the mofussil courts ?

A. No.

Q. You know that you have to submit a report to the High Court of any case in which an *ex parte* decree is sought to be set aside when service is effected by post ? Do you have many cases in which such applications are made to you ?

A. They are made sometimes, but they are not many.

Q. How many ?

A. During my time of 2½ years I had one dozen applications.

Q. Did you find there that the acknowledgment of service was false ?

A. If there is a tricky man he makes his wife or son sign and afterwards says that it is not his signature. I had a case before me in which a pleader accepted the notice but he was not the pleader who conducted the suit. When the case came up before me the pleader who was conducting the case denied service and by chance the pleader who had accepted the case came in and I inquired from him and he said that his clerk signed for him and accepted service.

Q. Now as regards the cases where the parties apply for adjournment. In them the practice at present is to find out the witnesses who have turned up and what their daily expenses come to and to order the payment of that sum to the other party—sometimes of course this payment is made in cash. You say there is no proper rule to ascertain a day's costs. Would you like to see some proper rules made on that point ?

A. Yes.

Q. How would you calculate the sum to be paid to the pleader. You see a pleader is paid once for the whole case and there is no reason why his time should be wasted when the case is adjourned unless he is paid some extra fee. What would be reasonable to allow to a plaintiff's pleader where the defendant applies for an adjournment unnecessarily ?

A. That would depend upon the nature of the case.

Q. Don't you see that the pleader's time is wasted for nothing and do you not think that a definite sum should be fixed for him in such cases—say for instance Rs. 20 to Rs. 30?

A. I think that the sum should be the maximum earning of a particular day.

Q. Have you considered that a man, who only gets an adjournment as a matter of grace, ought to pay for it, not putting the plaintiff or the other party to any expense over it ? Do you think that it would be satisfactory if the court were allowed to include twenty or thirty rupees for the pleader's fee ?

A. That would be enough.

Q. Do you think that twenty or thirty rupees would be enough or would you make it lower ?

A. I would not lower it.

Q. Twenty or thirty rupees may be his fee for the whole case.

A. That is why I said that it should depend upon the nature of the case.

Mr. Justice Stuart.—*Q.* Would there be any practical difficulty in working it out? You have a case, perhaps, for five hundred rupees and you are losing a day. Give the pleader ten rupees and if it is a bigger case, pay him sixteen or twenty rupees. I would rather leave the matter entirely to the discretion of the court. I deprecate making rules on every conceivable subject.

No reply.

Chairman.—*Q.* Supposing you get a small case and the pleader's fee for the whole case is only thirty rupees. Nevertheless he goes into the court and the case owing to the negligence of the other party, has to be adjourned for another month. There is necessarily nothing wrong in giving him thirty rupees. There is no need to make it small to give people an opportunity to think that at the worst they have to pay a few rupees to be entitled to an adjournment.

A. No.

Mr. Justice Stuart.—*Q.* Through the negligence of the other party the pleader might have lost a day. He might have been able to take up some other work that day ; should not the fee allow for that ?

A. Yes. At present the pleaders do like this. If they are likely to be engaged otherwise, they obtain the consent of the other party for an adjournment in advance.

Chairman.—*Q.* In Madras they have fixed a maximum of ten rupees in the subordinate judge's court and the district judge's court. That seems to me to be much too small ?

A. Yes.

Q. As regards execution, do you favour the proposal for abolishing article 182 of the Limitation Act, about steps in aid of execution, allowing the creditor to execute his decree at any time he likes within twleve years ?

A. If you allow the creditor to execute the decree without any limitation within twelve years, the judgment-debtor should be able to come to the court at any

time to certify payment. If he is not to be allowed to do it, the judgment-debtor will lose that payment.

Q. But under the present law you may get a new period for limitation without any notice to the debtor at all ?

A. That would be detrimental to the debtor.

Q. I do not quite follow. Supposing a man has got three years in which to execute, and then he gets another three years. In what way is the debtor any better off as regards certification than he would be if the steps in aid of execution were abolished altogether ? How much does it help the debtor for the judgment-creditor to come in every three years ?

A. In that particular application the creditor has to say what is the previous satisfaction and what is still due. If he goes at the end of 12 years, even when his decree is satisfied, the debtor knows then only that the creditor wants to execute the decree.

Mr. Justice Stuart.—Q. I do not see any difference.

A. According to my notion that will put the debtor in a wrong box.

Q. He is in the wrong box already. Take a very common case. A decree-holder is paid fifty rupees in grain. Within three years he puts an application for execution and states "satisfaction *nil*." The judgment-debtor goes into the court and says "I paid fifty rupees in grain." The court says, "Have you certified it." He says "No." He is given no credit.

A. I will put my experience before you. Just when the creditor is alive, he would not like to take advantage of the debtor. But if he dies, his heir says, suppressing the accounts, "I do not see any payment." If the original man is living and if we examine him, we sometimes make him admit the payment.

Chairman.—Q. Your idea is that when people make applications for execution merely for purposes of keeping the decree alive, they have to state in their application the present position of the debt.

A. Yes.

Q. Sometimes in that way you may get a certain amount of information which might prevent the judgment-creditor or his heirs afterwards claiming more. Supposing there was an admission of a payment which had not been certified, what would be the position in law ?

A. That payment would be binding on the party making the admission.

Mr. Justice Stuart.—Q. How is a judgment-debtor even now to know of the application ?

A. The court is bound to look into the previous records.

Q. When a man is really out to be dishonest in a matter like that, within 3 years he may put in an application in which he may state anything he likes. Notice is not served. That is a step-in-aid. Within another 3 years he does it again. Then again notice is not served. He keeps the matter alive. What I cannot understand is why so many people take the objection that the judgment-debtor must be kept informed of the existence of the decree against him, when it is perfectly easy, as the law now stands, for a dishonest decree-holder to keep the decree alive for 12 years, without giving him notice.

Dr. DeSouza.—Your point of view is that there should be no step-in-aid unless effective service is made on the judgment-debtor.

A. I will go to that extent.

Mr. Justice Stuart.—Q. Then, you will be giving too much advantage to the dishonest judgment-debtor who can kill the decree by evading service. Personally I think the best thing is to dispense with most of these notices.

A. In our Presidency there is this incongruity. The agriculturist can prove a payment at any time whether certified or not. This is not done in other provinces

Q. It is negligible.

A. Yes, it is very rare.

Q. Do the peons return registered letters saying that the defendant could not be found ?

A. Generally the report is "Refused."

Q. Do you think that such a report is made with the connivance of the party concerned ?

A. In majority of cases it is true.

Q. Did you have any complaint against the honesty of the postal peons ?

A. No.

Mr. Gupte.—*Q.* In Bombay is service by post allowed ?

A. Yes.

Chairman.—*Q.* Nowhere else ?

A. In Bombay and the district towns.

Q. You quote Mr. Justice Batchelor's view on the framing of issues that when you are framing issues in terms of the section it is better to follow the exact words of the section ?

A. Yes.

Q. Then you always insist upon the proper opening of the case ?

A. Yes.

Q. You find it works well and you feel no difficulty ?

A. Yes.

Q. You are against the idea of examining both the parties at the beginning of the hearing ?

A. Yes.

Q. You are rather in favour of taking power to require the people to put in a list of witnesses at the beginning and then calling more witnesses only upon making some proper explanation, putting it in the power of the judge to refuse to allow any number of witnesses.

A. Yes.

Q. At present as a matter of fact a list of witnesses is filed with the object of summoning witnesses.

A. In Ahmedabad they try to put no list at all.

Q. Is there anything to require them to put in a list of witnesses ?

A. No, there is nothing in the law.

Q. In fact do they put in a list of witnesses ?

A. When the judge insists upon their doing so.

Q. Then you say something as to how a case ought to be conducted. You say that the plaintiff must open his case first and begin his evidence and then close the case and similarly the defendant should then open his case, call his witnesses and then close the case. Some people say that the Code means that you always have got a right to go on calling your witnesses. The interpretation they put is on the old sections 156 and 159, now Order 17, Rule (1) and Order 16, Rule (1) which give the litigant a right to ask the court to recall the witnesses. Clearly you cannot exclude any witness because he is not on the list as there is nothing to authorize you to exclude any witness ; but I take that if a witness has beensummoned and does not attend and you hear the plaintiff's other witnesses and then adjourn the case for the examination of this witness you hear any other witness who may turn up at the next date of hearing which is really fixed for the examination of the witness who was absent on the last occasion.

A. That we do.

Chairman.—*Q.* Do you think it would be possible to do anything to discourage benami transactions ?

A. I have not touched that point in my notes.

Q. Have you any idea on that question which you would like to express ?

A. As far as my experience goes I don't think in this province benami transactions have largely delayed matters or caused unnecessary trouble. They are very race. They do'nt amount to a nuisance.

Q. You don't think benami has become an inveterate habit in this province as in some other parts of India.

A. No.

Dr. DeSouza.—*Q.* You have been invested with jurisdiction, in the small cause court, up to Rs. 1,000.

A. Yes.

Q. How long since ?

A. From March 1921.

Q. How long is it since subordinate judges were invested with jurisdiction of Rs. 1,000?

A. It is a recent policy of 4 or 5 years.

Q. Will you kindly say what is the nature of the suits between Rs. 500 and 1,000 that come up for decision before you as a small cause court judge ?

A. They were wagering contracts. The nature of the suits between 500 and 1,000 is the same as that between 1 and 500.

Q. Generally of a more contested nature.

A. Yes. They take more time.

Q. What proportion of the suits will be between 500 and 1,000 in a year ?

A. It is 300 a year.

Q. Out of a total institution of ?

A. 4,000 a year.

Q. Have you found after the conferment of this jurisdiction of Rs. 1,000 there have been a large number or a considerable increase in the number of applications for revision under section 25 ?

A. I worked it out when the Chief Justice came to our court. The revision application between 500 and 1,000 was one in 100 and between 1 to 500, one in 400.

Q. So, with regard to suits between 500 and 1,000 the revisional applicationt would be 4 times as many as applications between 1 and 500.

A. Yes.

Q. What has been the result of those applications ?

A. More than half were dismissed. I am speaking of the statistics which I worked out when the Chief Justice came there.

Q. Was there any complaint from the Bar or the public ?

A. This formed the subject matter of an address to the Chief Justice. The address is on the records of the High Court. The pleaders thought that there was a public grievance since they lost the right of appeal. But Their Lordships on looking into the figures did not think that anybody had a grievance.

Mr. Justice Stuart.—*Q.* When this public address was presented, how many of the memorialists were litigants ?

A. They were all lawyers.

Q. Was any address presented by people who were not lawyers ?

A. Not to my knowledge.

Q. Was any representation made to any one else except to the High Court ?

A. Not to my knowledge.

Q. You said you have got a good number of what you call " Satta " cases that is cases in which the loser pleads that the contract is a wagering contract and the matter is very keenly fought out.

A. Yes.

Q. That covers a point on which there are a large number of conflicting decisions.

A. Yes.

Q. Such suits raise very difficult points of law.

A. Yes.

Q. Nevertheless you say there was only one revision out of 100 and that has always been not successful. You can hardly have anything which raises more controversy than the question of wagering contracts, and yet there are not many revision applications.

A. Yes.

Chamber of Commerce, Bombay.

Written Statement of its Committee.

1. The period reasonably required for the disposal of certain classes of civil proceedings is in :—

(*a*) The High Court: original suits—	
(1) commercial	3—4 months.
(2) summary suits	4 weeks.
(3) short causes	1—2 months.
(4) other suits	12 „
First appeals	4 „
(*b*) The Court of Small Causes—	
(1) any suit.	2 months.
(2) execution proceedings	2 weeks.

2. The reasonable limit for the disposal of the above proceedings is exceeded at present in many cases, the main causes of the delay being—

(1) the understaffing of the prothonotary's office;

(2) the insufficiency of judges;

(3) the indefinite adjournment of causes.

In connection with (2) the Committee suggest that if no increase in the number of judges can be contemplated, the work might be more economically distributed among them on the lines indicated in their answer to question 3 (below).

The Committee desire also to emphasise the fact that undue advantage appears to be taken of the existing rules regarding the adjournment of cases and to suggest that in regard to suits which have been on the file for more than twelve months a rule should be made, and enforced, to the effect that no consent precipe should be filed without the consent of a Chamber Judge.

3. As already stated in their answer to question 2, the Committee consider that the period during which civil proceedings are now pending can be considerably shortened by a redistribution of the work of the judges and in that connection they also desire to suggest the desirability of the judges sitting for longer hours. In particular the Committee consider that all Chamber work might be done by one judge who should also hear short cause suits. Similarly the Committee suggest

that one judge, not the Chamber judge, should hear commercial suits so long as there were any to hear, commercial suits to have preference; in this connection they also suggest that the present rules regarding the hearing of such suits should be amended to enable the defendant to claim a transfer of the suit to the commercial list if he is so advised.

8. The practice of postponing causes on account of counsel being engaged elsewhere is very prevalent in Bombay and the Committee consider that the practice is to be deprecated and should, if possible, be stopped.

15. The Committee are definitely and emphatically opposed to the extension of the jurisdiction of the Presidency Small Cause Courts for the reasons set forth in the attached copy of their letter, No. 817-110, dated 11th April 1924, to the Bombay Government in the same connection.

18 & 19(*a*). The Committee do not consider it desirable in any circumstances to curtail the right of appeal in this country.

23. The Committee do not consider that the right of application in revision to the High Court is abused and they understand that considerable difficulty is experienced in obtaining a revision from the Small Cause Court to the High Court.

24. As regards original suits in the High Court, the Committee suggest the following changes in the present procedure—

First, that as regards summary suits (*a*) the present limit of 6 months be abolished and that parties be allowed to file such suits at any time within the ordinary period of limitation; (*b*) interest be allowed between the date of the accrual of the cause of action and the date of the decree where interest would otherwise be allowed, as the Committee understand that the fact that interest is not now so allowed frequently causes parties to file a short cause instead of a summary suit; (*c*) in summary suits on bills of exchange, accounts, etc., the preparation of a plaint be rendered unnecessary and the filing of a summons with the particulars contained in a specially endorsed writ as in England be sufficient.

Secondly, that a defendant may, if so advised, apply for a transfer of a suit filed on the Original Side to the commercial list.

Thirdly, that the practice of having to give a defendant, whom it is sought to arrest, notice of the intended arrest be abolished.

If the reference to "small cause suits" refers to the Small Cause Court the only suggestion the Committee wish to make is that if a suit is not reached for want of time it keeps its place and be heard the following day or the day after and not on a first available day, to be fixed possibly six weeks or three months later.

29. The Committee consider that the suggestion should be adopted.

35. The Committee consider that a great deal of unnecessary evidence is admitted in the courts of this presidency and they would suggest that the party on whose behalf such witnesses are called should be mulcted in costs.

36. The Committee do not agree with the suggestion that in the cases in question affidavits should be the primary mode of proof and they are opposed to the use of affidavits to any greater extent than prevails at present, especially in India.

37. The Committee do not consider the suggestion that courts should have discretion to fix a time limit for the examination and cross-examination of witnesses to be a practicable one.

42. The Committee consider that undue advantage is undoubtedly taken of the practice of granting *ex parte* injunctions and orders and they think that there is great danger in allowing *ex parte* injunctions in the case of associations and similar bodies, in which connection they have in mind a case in which the clearing of the East India Cotton Association was completely suspended for several

days through the granting of such an injunction. They suggest as a possible check the provision of adequate security.

43. The Committee do not consider that the judgments of the courts are unduly long but they do complain of the delay which is invariably experienced in obtaining copies of the judgments.

45. The Committee have dealt with this question in their answer to question 3.

48. The Committee do not consider the insistance on written applications supported by affidavits for adjournments to be essential, provided that in the event of an application for adjournment being made without good cause the whole or a substantial proportion of the costs is allowed.

51. The Committee consider that the subordinate courts should adopt the same procedure, as the High Court, for commercial suits.

52. The Committee suggest that notice may be dispensed with in all cases where arrest is sought of a debtor. Further the mode of transfer of decrees from court to court should be simplified.

68. The Committee agree with the suggestion that the power of co-ordinate or inferior courts to grant injunctions to stay execution of other courts' money decrees should be curtailed.

69. One reason for the delay which undoubtedly exists is that schedules are not filed sufficiently quickly and the Committee consider that the golden rule should be that an insolvent should file his schedule quickly and obtain his discharge slowly.

70. The Committee consider that it is practically impossible to obtain an order for attachment before judgment under the present practice. They suggest that either the Scottish practice should be adopted under which they understand a plaintiff is entitled to attachment before judgment as of right or that at least the words in Order 38, Rule 5 of the Civil Procedure Code " with intent to obstruct or delay the execution of any decree that may be passed against him " be omitted.

75. In the first case the Committee are emphatically of opinion that provision should be made by legislation for the registration of partnerships and that in the case of death the legal representative should be required to register within a month.

Secondly, the Committee consider that everyone should be compelled to take out letters of administration or probate.

Thirdly, the Committee consider that in view of the extent to which minors indulge in trading, provision should be made for the legal recognition of their liabilities in such cases.

Fourthly, the Committee suggest the passing of an order in the nature of a decree without notice to the defendant immediately on the presentation of a dishonoured hundi which has been protested for non-payment.

77. The Committee are very strongly of opinion that all partnerships should be registered without regard to the capital involved.

81. The Committee are of opinion that the benami system should be abolished.

82. The Committee do not consider that frivolous suits can be put down by enhancing the rate of court fees in suitable cases and they maintain that the only satisfactory remedy is a speedy trial.

83. The Committee consider that it is necessary to insist upon the attestation of mortgage documents and they are of opinion that the same provision should apply in the case of sale deeds and leases as well.

85. The Committee have no objection to the reference of technical cases to fully qualified referees.

Letter from the Chairman of the Chamber of Commerce, Bombay, No. 817/110 of 1924, dated 11th April 1924, to the Secretary to the Government of Bombay, Home Department, Bombay Castle.

I am directed to acknowledge the receipt of your letter No. 3589-B, dated the 14th of February 1924, in which you request my Committee's views on the provisions of a draft bill further to amend the Small Cause Court Act, 1882, in its application to the Presidency of Bombay, and in reply to state hereunder my Committee's comments on the bill.

2. The object of the amending bill, as set forth in the statement of objects and reasons appended to the copy of the bill which accompanied your letter, is to extend the jurisdiction of the Presidency Small Cause Courts, in money suits, from Rs. 2,000 the present limit, to Rs. 5,000 and to empower them to take cognizance of some classes of cases which it is thought can properly be disposed of in these courts, but which now have to be instituted in the High Court. The reasons for the proposed extension of the jurisdiction of the Small Cause Courts are, firstly, to relieve the High Court of the necessity of trying suits which should properly be cognizable by a Small Cause Court and, secondly, to afford litigants a cheaper and speedier mode of redress.

3. Before proceeding to discuss the circumstances in which my Committee find it necessary to record their opposition to the Government's proposals in the foregoing connection, I am to say that they consider it desirable for me to review briefly the previous history of the question whether it is desirable to provide additional facilities for the disposal of suits not at present within the jurisdiction of the Small Cause Court. The last occasion on which the question in its present form was closely examined by the Chamber was in 1916 when its opinion was invited by the Bombay Government as to whether there should be a city court for the town and island of Bombay with jurisdiction to receive, try and dispose of all suits and other proceedings of a similar nature not exceeding Rs. 5,000 in value, in addition to the High Court and the Small Cause Court, or whether the jurisdiction of the latter should be raised to a higher limit of value and its scope generally extended. The Chamber was at the same time invited to put forward any other suggestions which in its opinion would make for the avoidance of high costs in comparatively small suits and proceedings.

4. In the course of their lengthy reply the Committee of the Chamber stated that they were not in favour of the establishment of a City Court or of the extension of the jurisdiction of the Small Cause Court but they recommended the effective formation within the High Court of a special Commercial Court to deal with mercantile cases and the appointment of a special judge to preside over the Court. The Committee added that they understood that the rules of the Bombay High Court contained special provisions relating to the hearing of commercial suits but that no special Commercial Court had been constituted and while they were willing to concede the possibility that the number of commercial causes might not be sufficient in ordinary times to keep one judge continuously employed they considered that their point would be met if the judge were specially appointed to sit as a commercial judge and take up such causes in priority to other work. The Committee then detailed the procedure adopted by the Commercial Court in England and that followed by the Bombay High Court in hearing commercial suits and endeavoured to point out how in their opinion the rules of the Bombay High Court might be amended to achieve the object in view. As no action followed this reference it may be assumed that the Committee's objections to the original proposals received some measure of support in other quarters. Unfortunately however, their alternative proposals did not receive the same consideration and my Committee now understand that the rules of the Bombay High Court to which the Committee of 1916 referred have neither been revised nor has full use been made of the existing machinery.

5. Turning to the bill under reference I am to state that my Committee consider that the question of extending the pecuniary jurisdiction of the Small Cause Court to Rs. 5,000 in which connection they observe that severe penalties in the way of costs are to be imposed on plaintiffs who shall file in the High Courts suits which are ultimately declared to be cognizable by the Small Cause Court, should be examined from two aspects :—

(1) whether it will provide litigants with a more speedy and cheaper mode of redress, and, if so,

(2) whether such advantages will in any way be outweighed by other considerations, *e.g.*, in the shape of a possibly less qualified tribunal, legal assistance of a possibly less efficient character, or methods of procedure which are not necessarily conducive to the fairest and most satisfactory hearing of cases in which important questions of principle are involved.

6. As my Committee's objections to the proposed measure relate mainly to the second point, I am here to state that they are strongly of opinion that neither the qualifications nor the experience of Presidency Small Cause Court judges are such as to justify the extension of their jurisdiction in the case of commercial suits in the manner proposed and in this connection to observe that the limits of pecuniary jurisdiction in the case of Country Courts in England, on the model of which the constitution of the present Presidency Small Cause Court is based, is £100, or Rs. 1,500. My Committee desire to lay particular emphasis upon this aspect of the question for very important and intricate legal issues are often involved in the trial of commercial suits of even a small pecuniary value.

7. Until the scale of costs under the new arrangements has been published it is impossible to say what the status of legal practitioners appearing in the court within its extended jurisdiction will be, but although it may be anticipated that commercial cases of considerable importance will frequently be triable by the court it is unlikely that the maximum fee recoverable will exceed Rs. 100 in which case it will obviously be impossible for solicitors and counsel to appear unless clients are willing to bear the excess, the alternative being to rely on a pleader, without the advice of a solicitor. This is in the opinion of my Committee a factor of considerable importance. They are convinced that, in an important case, it will be impossible to proceed without the help of both a solicitor and a capable advocate. If therefore these have to be paid for without the possibility of recovering the cost from the unsuccessful adversary, it will go far to offset any saving which may be effected in suits of a simple nature in which it may be considered possible to instruct a pleader only. Even this saving is illusory for a Rs. 5,000 suit in the Small Cause Court will, because of the heavy court fee demanded in the Small Cause Court, cost just as much as a short cause suit of the same value in the High Court. This again is an argument in favour of speeding up the procedure of the High Court rather than increasing the jurisdiction of the Small Cause Court. By so doing, the commercial community would obtain a higher class of judgment than would be obtainable in the Small Cause Court, at no greater cost.

8. I have already sufficiently indicated my Committee's objections to the proposed measure on general grounds and they do not therefore think it necessary to discuss its details except to state that they are informed that no law reports are maintained in the Small Cause Court and consequently no records of precedents, etc., are kept, and this in their opinion is an additional consideration to be borne in mind when the proposals are examined from the point of view of speed and cheapness.

9. I have endeavoured to show in the foregoing paragraphs that in the opinion of my Committee the extension of the jurisdiction of the Small Causes Court will not necessarily provide litigants with a more speedy or cheaper mode of redress and further that certain very important considerations are likely to outweigh any advantages which might be gained in that direction. At the same time they consider that both the objects in question can be secured in a more direct and satis-

factory manner, namely, by the provision of additional judges in the High Court and the maintenance of an adequate staff, the work of such judges to be confined as far as possible to the hearing of commercial suits in accordance with the procedure recommended by the Chamber in 1916, and they are unanimous in their view that the best interests of the commercial community will not be served by the adoption of any other course.

Messrs C. N. CAROE and V. A. GRANTHAM, Representatives of the Bombay Chamber of Commerce, called and examined on Wednesday, the 3rd September 1924.

Chairman.—*Q.* We are much obliged for your statement. It would not be necessary for me to take you over the whole of it again. I would like to go through one or two special points. I see you say that the commercial suits in the High Court should be reached in three or four months. That would be satisfactory. Would it be ?

Mr. Grantham.—*A.* That will be perfectly satisfactory.

Q. Then for the first appeals you suggest four months. That you think would give you ample time to prepare the paper book under the present rule ?

A. It depends upon the size of the paper book.

Q. I understand in printing paper books of first appeals, the arrangement of which is entirely with the solicitors, the rule that they follow I take it, so far as order of the documents is concerned, is much the same as the rules laid down by the Privy Council for the Privy Council appeals. That is to say, you do not put, for instance, the copies of the correspondence in the order of the exhibits marked instead of the order of the dates ?

A. We print the correspondence according to the exhibits.

Q. Would it not be better if all paper books are more conveniently arranged and correspondence put in order of dates ?

A. It would simplify matters also for this reason, that the paper book has to be sent to the Privy Council.

Q. In Calcutta we have a system under which the paper books in cases which can *prima facie* go to the Privy Council have to be printed in the Privy Council form from the very beginning. We object to extra expenditure, but at any rate the benefit would be in the court knowing exactly what you want. It is very often the case that you get a letter on page 22 and then you find the answer on page 69.

A. I think the trouble arises from the fact that most of the correspondence is attached to the plaint and the wrtitten statement. Personally I cannot see any object in it and it does not seem to be justified by the Civil Procedure Code.

Q. Well, the Civil Procedure Code merely says that the plaintiff should bring into court the documents on which he relies, and then as regards the defendant to deposit the documents on the first hearing. Of course all that is inapplicable to the documents in the High Court.

A. But if you file an affidavit of documents there is no object in attaching them to the plaint.

Q. There is no reason why the delay in putting in the affidavit should be such as to afford time for forgery. I take it that the original idea of the Code in requiring the plaintiff to deposit the documents in the court was that he may not forge the documents. You do not file the documents, you file only the copies with the plaint. If the plaint is filed, and the defendant, before filing the written statement, wants to see any document referred to in the plaint, there is ample provision that he can compel and have the original documents disclosed, before he files his written statement.

A. Yes, if it is referred to in the written statement.

Q. What may be required in the mofussil may be unduly cumbersome in the High Court ?

A. I had a summary suit the other day in which I had to exhibit 42 letters and it seemed to me absurd.

Dr. DeSouza.—*Q.* Is there any objection to the filing of the documents with the plaint, or the documents being copied as a part and parcel of the plaint ?

A. To copy them as part of the plaint it seems to me a waste of time.

Chairman.—*Q.* I see you say that one cause of delay is the understaffed office of the prothonotary ? There seems to be great unanimity about it.

A. I do not think that there can be any doubt about that.

Q. Where does it pinch particularly, is it the question of taking out copies or getting copies translated ?

A. I think the delay is mainly in getting your judgment and decree, because a good deal of work which used to be done by the prothonotary's office is now supposed to be done by the solicitor, such as drawing up the order. It is now done by us.

Q. Is there anything more that can be done by the solicitors before the copy is passed through the prothonotary's office. I understand that the drawing up of the decree has been left to the attorney. They can draw up the decree and then put it in the office for approval.

A. Yes.

Q. Has that change worked satisfactorily ?

A. I do not think that it has made much difference, because it depends upon the manner in which the decree is drawn up. The solicitor's point of view is usually very much in his own favour and he gives something in his own interests.

Q. As regards the insufficiency of Judges you suggest that there might be a proper distribution of work. In particular you think that all chamber work might be done by one Judge who should also hear short causes and that one Judge, not the chamber Judge, should hear commercial suits.

A. Yes.

Q. As regards chamber work does one Judge do all chamber work now or is it distributed among several Judges ?

A. Only one judge does it.

Q. As regards short causes coming on for hearing for the first time, I think they now go to several Judges.

A. They are all taken on every Tuesday and they are given to all the Judges except to the Judge who does insolvency work.

Q. Do you find that it interrupts other work unnecessarily ?

A. If one has a part-heard case on Monday night, he really has to come to court at 11 on Tuesday. He may have to wait until half past two. There are some Judges with long list who will take up the whole of Tuesday to get through the short causes.

Q. Would it be better if all this is taken on Monday ?

A. I think that would be a good idea.

Q. Are there any other suits that are treated as commercial suits ? Take ejectment suits that come before the High Court. Here they are filed as rent suits but really they are ejectment suits.

A. Yes.

Q. Are they given expedition ?

A. A special Judge tries them. We used to get judgment in 7 weeks.

Q. Is summary procedure under Order XXXVII extended to them ? Are they given short dates ?

A. Not for ejectment suits.

Q. I think with the increase in the number of courts, the number of counsel with good practice is found to be hardly sufficient for an equitable distribution over all courts. Do you get a certain amount of difficulty as regards counsel not being able to attend to all cases ?

A. It is so.

Q. Do you find the same thing as regards attorneys ? Do you find that those attorneys who seem to have the confidence of clients get more work than they can cope with ? I do not mean more work out of court. I mean more as regards court work.

A. I think so. If an attorney gets more work he takes a partner.

Q. As regards extension of the jurisdiction of the Presidency Small Cause Court, what is the position of your Chamber ?

A. We are definitely opposed to the suggestion.

Q. Would you just give your main points ?

A. While we want speedy justice we do not want cheap justice at the sacrifice of efficiency. We are not satisfied with the judgments we get in the Small Cause Court, from the commercial point of view.

I take it that the main thing that affects you as a Chamber would be the extension up to Rs. 5,000 as regards money suits.

A. Yes.

Q. The proposed extension as regards administration suits or partnership suits or partition suits is not so important, I take it, from your point of view.

A. It may affect partnership suits. We are definitely opposed to commercial suits up to Rs. 5,000 going there.

Q. What are the commercial suits in Bombay under Rs. 5,000 ? What is their general nature ? Are they cases of damages for non-acceptance, damages for bad quality or something of that sort ?

A. They would very probably be suits against dealers involving questions of principle, though they are for small amounts.

Q. What sort of questions of principle ? Will they be as to the standard form of contract or the usage of trade, as to which you don't want to get a wrong decision, because it will govern other cases ?

A. Yes.

Q. Do you get much arbitration work as regards commercial cases ?

A. Yes.

Q. Have you got much trouble about piece-goods in Bombay as where one man buys something and then sells it to another man on profit, the second man in his turn sells it on to the third man and so on ? Have you got much litigation about that ?

A. There was some trouble in the past but not now. A dealer in the market bought 400 bags and sold it on to another dealer by making some profit and that dealer sold it on to another dealer and so on. All of them tried to make some profit out of it and there was a good deal of litigation about that. But now these things are not occurring because the prices have fallen considerably.

Q. In these cases the importer has nothing to do, but there is trouble on account of the subsequent dealers.

Q. Is there much volume of that kind of litigation in Bombay ?

A. No.

Q. Do you think that for Rs. 2,000 a month somebody could be appointed for this work—either a small cause court judge or a city civil court judge. Do you think that on Rs. 2,000 per month you will get a fairly competent man from the local Bar or from elsewhere to deal with the commercial contracts of your town ?

A. Where would the appeal lie.

Q. To the High Court ?

A. This very much depends upon the individual that is appointed. It is rather a difficult question to answer.

Q. You do not want commercial cases to be tried by somebody who has got no experience in these matters ?

A. We want a man who really does know the ordinary commercial procedure and the commercial law.

Q. But not somebody who simply looks at the Contract Act and tries to imagine all the rest himself ?

A. No.

Q. Is that fairly unanimous opinion among the members of your Chamber that they object to any extension above Rs. 2,000 ?

A. I should think it is fairly unanimous, but there are a few who consider that justice should be cheaper; but the majority were not prepared to sacrifice that to efficiency.

Mr. Justice Stuart.—Q. On the question of delay what is the remedy ? Is it not very bad ?

A. Very bad indeed.

Q. The advantage of the new court will be increase of speed, but the disadvantage would be less efficiency. How do you propose to increase the speed ?

A. We would not like to sacrifice efficiency for speed.

Q. If the jurisdiction is retained by the High Court, increase in speed involves an increase in the staff. On the Original Side there were nine Judges. The number has now been increased to ten, while the number of institutions has gone up from 1,000 to 5,000. Is there much advantage in creating smaller courts ? Will it not be better to have more judges on Rs. 4,000 instead of creating judges on Rs. 2,000 or Rs. 2,500 ?

A. Our chamber is of the definite opinion that we should confine our suits to the High Court.

Chairman.—Q. Would it make any difference to your opinion if there is a right of transfer to the High Court when there is a very difficult question to decide ?

A. It is always very difficult to get a case transferred.

Q. Because you have to show a case in that case and you have to satisfy the Judge that the case should be transferred to a superior court ?

A. Yes.

Mr. Justice Stuart.—Q. The transferred case will take a very long time ? First of all you have to get the transfer, then the case would be taken on the long cause list and then you will be lucky if you get a decision in four years ?

A. Yes.

Chairman.—Q. Under that arrangement the plaintiff can file a suit in the High Court or the defendant can get his case transferred to the High Court. Do you think that will work well ?

A. The first point why the plaintiff files his suit in the High Court is that he has to pay less fees and the second point is that the small cause court grants instalments.

Q. I understand that under the new scheme it is intended that the new jurisdiction should be the High Court jurisdiction ?

A. I think so.

Mr. Justice Stuart.—*Q.* For what reasons do they grant instalments ?

A. Because the defendant says that he is a poor man and he can not pay.

Q. Quite apart from the truth of the allegation, does a man who can excite emotion get an instalment order irrespective of his financial capacity ?

A. Yes. there are some people who do like that.

Chairman.—*Q.* Do you get trouble like this. The creditor gets an order of Rs. 20 a month, but the man does not pay. He takes out execution and in reply an application is made that Rs. 20 is too much and that he cannot pay. It is adjourned and not decided for a long time. Have you got this trouble here ?

A. I have not got enough experience about that.

Q. In these matters the judge can know whether the man can pay or not. Supposing the man is an engine driver, the judge can know what his real expenses are and grant an instalment order accordingly ?

A. Yes.

But our objection is that in the Small Cause Court we should have the same legal advice and same counsel to represent us as we have in the High Court.

Q. I take it that commercial litigation so far as the European firms are concerned is comparatively less in the Small Cause Court.

A. Yes. I should say it is very small.

Q. The great bulk of the work there is between Indian traders.

A. Yes.

Dr. DeSouza.—*Q.* I take it that the main objection from you as regards the creation of the City Civil Court or the extension of the jurisdiction of the Small Cause Court up to Rs. 5,000 is with regard to the commercial suits in which the English Chamber of Commerce is concerned.

A. Yes.

Q. I think that 30 per cent. of the institutions on the Original Side of the High Court are suits under Rs. 5,000 and out of these I believe the percentage of the cases in which the European firms are interested would be comparatively small. Have you any figures ?

A. It is perfectly correct. The thing is that we, the European merchants, do not file our suits in the courts because it takes a very long time for their disposal. In the first place two to three years are spent in getting the judgment and then the realization of the amount takes a very long time.

Q. For the sake of those few commercial suits would it be advisable to clog the administration of justice on the Original Side of the High Court ?

A. We would like to go to court frequently and therefore we have raised this objection.

Q. All the same your suits are very very few ?

A. At present no doubt they are, but the number will increase if you put things in an efficient form.

Mr. Justice Stuart.—*Q.* If greater facilities are given in the High Court for the disposal of commercial suits do you think that there would be an increase in the number of commercial suits ?

A. Yes. If we have facilities we will go to the court more frequently.

Dr. DeSouza.—*Q.* Have you any objection as to the personality of the Judge ? Is this the reason for your not coming to courts with commercial suits ?

A. Very largely I should say yes.

Q. Do you think that you would be able to get a Judge say at a salary of Rs. 2,500 from the Bombay Bar who would be able to dispose of these petty commercial suits and who, you think, would be less liable to attack than some of the Judges at the present moment ? Can you give your views upon this ?

A. I am afraid I am not prepared to say anything about the efficiency or the inefficiency of the Judges.

Chairman.—*Q.* I understand that as regards Order 37 there are some rulings on the point that interest could not be allowed. I don't know why. I think there are some people who have the idea that interest ought not to be allowed. Do you not think it fair and reasonable to allow interest to a man who has been kept away from his money for a certain period of time ? Should he not get the interest ?

A. I think it should be allowed.

Q. And as regards bills of exchange you think that the filing of the plaint with all the correspondence and so on is quite unnecessary ?

A. Yes.

Q. Generally speaking, you think also that the defendant ought to be allowed just as much right to get a commercial suit transferred as the plaintiff ?

A. It is only fair.

Q. Then you think that there is no use giving a notice of arrest before issuing a warrant of arrest ?

A. Yes, otherwise the debtor runs away.

Q. I think that there is a good deal of mistake about that. Under the Code ordinarily you ought to issue a warrant of arrest at once and it should be the exception to give a notice.

A. The Sheriff will not arrest anybody unless he has got a special order from the Judge.

Q. But if the Sheriff gets a warrant ?

A. A warrant will not be issued unless the Judge gives a special order.

Q. You cannot have a warrant issued only by the office ?

A. No.

Dr. DeSouza.—*Q.* What is the present position as regards the warrant of arrest outside the jurisdiction of the High Court ?

A. I cannot say. When I send my warrant, by the time it reaches there, the man gets to another place, or comes to Bombay. I cannot do anything.

Chairman.—I know that there has been some discussion about that, and it has now been held that the High Court has no power to issue a warrant entitling anybody to arrest a debtor, say in Rangoon. Do you know whether your High Court has decided that the High Court has power to issue a warrant of arrest in its extraordinary jurisdiction, say in Sind ?

Dr. DeSouza.—Mr. Justice Crump decided after an elaborate consideration of the authorities that a warrant issued by the High Court of Bombay can be executed within the extraordinary jurisdiction of the province of Bombay, but when it was put before Mr. Justice Mulla, he did not accept it and said that the old practice should continue.

Mr. Justice Stuart.—*Q.* You must have legislation on the subject. Is there any reason for showing excessive tenderness to the judgment-debtor ?

A. I am in great trouble. My plaintiff is in England and I sometimes get rude letters.

Chairman.—Now as regards appeals, does your chamber get much litigation of the type that comes before the High Court in second appeals ?

Mr. Grantham.—Not much.

Q. I was asking you because you know in India, as regards suits for the recovery of money and movables, which are within the Small Cause Court jurisdiction, we have pretty expedition, as there is no appeal from the decision of the Small Cause Courts. There is only right of revision under section 25, and as regards big cases over five thousand rupees in value, in the same way, there is an appeal to the High Court and then to the Privy Council. But with regard to the intermediate class of cases, which, generally affect a right of easement, or something relating to land, there is a trial and then there is an appeal in the district court, which

sometime takes a year to come up. The trial even takes two years and the appeal may easily take another two years, and then there is a right of second appeal and it takes another eighteen months. In these cases—a right of appeal is given to all, regardless of their value. The only thing is that under Order XLI, Rule 11, many are thrown out, but even if they pass under that rule, some thing like hundred cases have to be decided in order that the High Court may put right 25. In addition to that there may be a Letters Patent Appeal, that is to say if second appeal is disposed of by a single judge, it is allowed to go further. Now, it seems to us that in that class of suits, the present right of appeal is out of all proportion to the value and importance of the subject, and what I want to know is whether the general opinion that it is not desirable to curtail the right of appeal in this country, is intended to apply to those suits, or whether you think only of the sort of litigation that you get in Bombay ?

A. I do not think that we have got much experience of the litigation that you are discussing and whether we have considered the question from that point of view.

Q. We do sometimes see that suits of very very little value are important and they get even four trials and sometimes result in remand at the fourth trial, and then they generally reach an ultimate decision in five years. Throughout the whole of India there are dozens and dozens of such cases. I wanted, therefore, to be quite clear whether the general principle objecting to the curtailment of right of appeal is merely that you do not think that in Bombay the right of appeal should be curtailed ?

A. It is difficult to answer because I am not acquainted with the class of suits that you are talking about, but the Chamber did feel that it is dangerous to restrict the right of appeal.

Q. Do you think that as regards these mofussil suits, your Chamber will necessarily object very much, if the right of second appeal were to be by leave, at all events in cases under five hundred rupees. That is to say instead of filing an appeal as of right and in some cases getting it summarily dismissed, the right should by showing that there is something wrong with the judgment of the court below or there is a special difficulty, making a case for second appeal, and getting it by leave. Do you think that will be objectionable ?

A. I do not think so.

Q. I would like to ask you about *ex parte* injunctions. I see you say that in one case the judge had suspended a business for several days by the granting of an *ex parte* injunction. Of course, there are some cases, I mean, cases of extreme urgency in which something has happened in the last few days that it may be right to give the plaintiff on good evidence an *ex parte* injunction. I see your Chamber is of opinion that undue advantage is taken of this. Are the injunctions granted easily ?

A. There is one particular example which is rather a bad one.

Mr. Gupte.—*Q.* The Judges of the High Court have issued rules for the granting of injunctions and they insist on notice being given to the other side before they grant an injunction. They don't grant it *ex parte*. At least 24 hours notices is given.

A. In the particular case it was granted without notice. It held up about a crore of rupees for a matter of a few thousands.

Mr. Justice Stuart.—*Q.* How long did the injunction last.

A. Four days.

Q. Did it damage your business ?

A. About a crore of rupees were held up without any interest.

Chairman.—*Q.* Now, as regards inslovency, I see you say that the insolvent is not made to file a schedule in good time. I think they get an interim protection order when they have not filed the schedule. There is no necessity to grant interim

protection in such a case. But are there not some cases where the man goes insolvent, and where his books are in a terrible mess and it takes some months to know where he really stands ?

A. I suppose there are exceptions to every rule. I mean there are people whose books are possibly in a mess. When the protection order is given, he generally walks off to an Indian State. It is impossible to get hold of him.

Q. Of course that is very difficult to be remedied. If a man goes off to an Indian State, to make him an insolvent and get the assets is rather a long business. It means improving the administration to some extent of the Indian States. But apart from that, in the case of people residing within the jurisdiction, have you ever thought of anything that could be amended in the Presidency Towns Insolvency Act ?

A. One is undoubtedly to send people to jail if they do not file their schedule in good time.

Q. Have you ever thought of any improvements in the working of the administration ?

A. I think to a great extent it comes to the same thing as the question of the staff. The insolvency work has much increased. The Official Assignee's office is sitting in the same room as when I came to Bombay in 1908. I am not blaming the officers in any way. If you write a letter it is very difficult to get an answer for some time. They send for the debtor. He comes one day. They are unable to attend to him. Then he goes away and does not come.

Q. There seems to be congestion of work.

A. I think they have more work than they can do.

Q. There is really only one real head to attend to the work apart from clerical work. The remaining people are clerks.

A. Yes.

Q. Have you ever known in Bombay the English practice of having a committee of inspection of creditors under the Presidency Towns Insolvency Act ?

A. No.

Q. I have tried it in Calcutta. You never get administration efficiently done if it is all left to an official and the real remedy as regards administering the estates, is to know what are the assets and to take decisions as to whether it is worthwhile to spend money to recover them. It cannot be satisfactory until you get the commercial community to regard the committee of inspection as an ordinary incident. After all it is their money. It is the creditor's money that is at stake from the beginning. It ought to be possible to get 2 or 3 creditors to serve on a sort of committee, at any rate just at the beginning. It would be very valuable if the official assignee should have the benefit of the committee of inspection to give him instructions and advice from their knowledge of the trade and position. Don't you think your Chamber might be able to do something to get the use of these provisions started in Bombay ? In Bombay I think there are a good many estates with large assets.

A. I think there are some estates where a good deal of money can be collected, if interest is taken. But the difficulty is to go through the account books. They are kept in a language which probably no one in Bombay can read.

Q. You are in favour of registration of partnerships. You would apply it to every partnership however small it is or however temporary it is ?

A. Yes.

Q. Supposing the rule is not complied with what would be the consequences ? I take it that if two or three men enter into a partnership and do not get it registered, you would declare it as illegal ? Would you not ?

A. Yes, I would.

Q. If you apply that to everybody in India, do you not think that it would produce a certain amount of hardship as there are parts in India where people enter into small partnerships—temporary partnerships and where registration may not be practicable ?

A. I would apply it in every case.

Mr. Gupte.—Q. For instance take the case of small dealers, *e.g.*, vegetable dealers with small capital of Rs. 50, joining together and doing business.

A. I would apply this to all cases of partnerships whether they are small or not. All partnerships should be registered.

Mr. Justice Stuart.—Q. Would not the remedy be to have a money limit ?

A. I think not.

Mr. Gupte.—Q. Would you not fix a money limit for registration ? Rs. 500 or something like that may be fixed. Below that they can not engage themselves in any serious business ?

A. Capital has nothing to do with it. As great trouble arises out of these matters we think that all partnerships should be registered.

Chairman.—Q. Then you say that in view of the extent to which minors indulge in trading, provision should be made for the legal recognition of their liabilities in such cases ? Do you think that in some cases minors take advantage of their minority and that when anything is brought into court they plead minority ?

A. We are strongly of the opinion that some provision must be made by which their liabilities should be legally recognised because in several cases, in which minors have indulged in trade and other business affairs, people with whom they were dealing had to suffer. I had to face the same trouble in five or six suits in which I got the decree but at the time of execution they pleaded minority. There is no doubt that they were minors but the trouble is that I had to spend so much money in getting decrees. When they take the risk why should they be allowed to plead minority ?

Q. This is a new suggestion and I am very glad to note it. Well in these particular suits in which you had to deal with minors, were they personally served ?

A. Yes.

Q. You could not do anything at all ?

A. No. Although I had obtained a decree, yet there was no remedy. Mr. Justice Mulla said nothing could be done.

Q. At the time he applied for a share, did he represent himself to be a major ?

A. He did not say one way or the other.

Q. In this case very probably he deliberately took the advice of somebody else ?

A. He might have taken the advice of his father or somebody else, but there it is that I had to spend Rs. 400 for nothing.

Q. Have you anything to suggest which I have not touched upon ?

A. There is one point and I do not know whether it comes within the scope of this Committee or not. There is great difficulty about cases on the Original Side when a Judge is taken from the Original Side to the Appellate Side. Some cases are left behind. I had a part-heard case last April before Mr. Justice Kincaid. He went to the Appellate Side. The defence was that he was an agriculturist. The prothonotary says that mine is a part-heard case and it must wait till Mr. Justice Kincaid comes back.

Q. Have you spent much time on the suit before Mr. Justice Kincaid ?

A. The defence in the written statement was that he was an agriculturist and he has produced a certain amount of evidence before him.

There is another matter to which we would like to draw your attention. The High Court has now issued a notice that after the 15th of September they

will have nothing but the suits of 1922 and they have forgotten all about the commercial suits from the point of view of the Chamber. I had a commercial case fixed for the 1st of August and it is now 3rd of September but it has not come out on board. If it is not put on board up to the 15th September I am afraid it will not be taken up for three or four months more. From the point of view of the commercial community these things should be improved.

Chairman.—I think this is a fit case to be brought to the notice of the Chief Justice and if you do so I am sure he will put it right.

Mr. Gupte.—There is another thing about which I like to ask you. There is a suggestion before this Committee that the title deeds in mortgage cases should be required to be registered. What is the view of your chamber on this point. A suggestion has been made that they should be registered compulsorily and if they are not registered they should not be recognised.

Mr. Justice Stuart.—*Q.* It is rather a question of remedy. I would like to consider any remedy. As things at present stand, suppose a house is attached in execution of a decree. It is now possible for a judgment-debtor to arrange for an antedated equitable mortgage of it with any of his freinds after decree and the friend comes forward and takes possession. Some fabricated receipts are produced. Do you not think that there should be some method of guarding against this, while safeguarding genuine business transactions ?

A. Yes.

Q. What method would you suggest to get out of the difficulty ?

A. One way to solve this is to do the thing before a notary instead of going to the registration office.

Q. What one wants is that there should be some reliable outside evidence that such a transaction had really taken place on that date.

A. Yes.

Chairman.—*Q.* In Bombay is it a thing that often happens that a man goes to the bank and gets a loan for a short period by depositing the title deeds ?

A. I think it is very common.

Q. Then do you think that this requirement of doing the thing before the notary would not be such as to make that impracticable ? I mean are these things done at the spur of the moment ?

A. No.

Mr. Justice Stuart.—*Q.* You can call the notary to your place but you cannot call the registration office. It would no doubt minimize the trouble but it would be a little more expensive.

A. Yes, but the amounts involved are substantial amounts. Fifty thousand or so.

Chairman.—*Q.* There is another question and I do not know whether you can give an expression of opinion on that or not. That is with regard to the rate of interest. The ordinary court rate of interest is 6 per cent. and usually that rate is allowed on decrees. Do you think that six per cent. in India is the proper rate, or do you think it is higher ? Take an instance of a decree. You give a man a decree for three thousand rupees, interest at six per cent. from the date of the suit till the date of the judgment. Then you give him interest at six per cent. on the aggregate amount. Now, do you think that is sufficient ?

A. I think it is given at nine per cent. unless it is agreed.

Q. If there is a contractual rate then interim interest is allowed at that rate till the date of the decree, and then the interest on the aggregate amount at six per cent. after the judgment ?

A. Yes.

Q. Do you think that it is fairly satisfactory to give six per cent.?

A. If you work out an average rate of interest for the year, it does not come to more than six per cent. year in and year out. If you take the real commercial

point of view, investing money in business season, then it comes to seven per cent. or rather more. From the point of view of the law, I think, six per cent. is quite sufficient.

Q. Do you find that if a man has got a decree against you, you refuse to pay and put off the payment because you, as a matter of fact, have to borrow at 12 per cent.?

A. I have never found this, but the usual practice in commercial houses is to charge six per cent. on over-due account with the dealers.

Q. Now, may I put it in another way. There is a clause in the Negotiable Instruments Act that if there is no stipulation for interest the presumptive contract is interest at six per cent. Now, for that purpose would you be in favour of raising it to any higher figure ?

A. No.

Dr. DeSouza.—Has your Chamber any complaint to make that sometimes with only a few hours notice you have suddenly to appear in the court, when your witnesses may be spread all over the country ?

A. We had a case in which, I think, the secretary of our committee was concerned. His leading witness was in Sholapur, and he was told overnight that his suit was coming on the next day. I had a similar suit dismissed. I had a man living forty miles away from the railway station, somewhere near the Central Provinces. He could not get in the second morning and the suit was dismissed.

Chairman.—You think that it ought to be advisable to give notice.

A. We have a prospective list. There are three classes of boards. First of all the general prospective board, which is the first stage to which a suit gets, when it has been in the High Court for a certain number of years. Out of that list the case comes on to the Judge's board. At the head of each board the name of the Judge is given and from that board cases go to the Judge's daily board. But there is a proviso that if one Judge has a larger number of cases or big cases, then cases may be changed from one board to another. The third board is the daily board, and of course one does get a sort of idea by looking at the Judge's prospective board, as to when his case is coming on. But you are not absolutely certain, because one heavy case may take the whole day of the Judge. Then we have to keep clerks to try to get the copy of the lists and in order to get the list they have to wait till late in the evening. But as I have to pay them extra and I must get the list, I have to stay myself till nine or ten in the evening.

Q. There is one question which I would wish to ask you. Do you find yourself hampered by the law as regards arbitrations ? Does it require any amendment ? Do you get suits to set aside awards ?

A. We did not take up the point ourselves. A very able case was put forward by the Karachi Chamber, at a meeting of the Associated Chambers of Commerce and that speech has been printed. That was the tenor agreed to by everybody.

Q. You think that speech would put me on the right lines so far as your Chamber is concerned.

A. Yes.

Q. I understand somebody has been deputed in the legislative department to make a digest of the recent decisions under the Arbitration Law and I may get a chance to review them from the point of view of this Committee. If I get the Associated Chamber's speech and go through it, that will represent the views of your Chamber.

A. Yes. It is a very technical speech. I must confess that in some of the points we are not clever.

Q. Have you any other points which you would like to tell us: any points that have come in your practical experience ?

A. No. Only now and then suits are referred to arbitration. I think the arbitrations by the Chamber are always accepted. There is no difficulty here. Perhaps 3 or 4 cases may be taken to court.

Letter from the Secretary, Bombay Chamber of Commerce, dated the 5th and 25th September 1924.

I am desired by Mr. V. A. Grantham, M.L.C., who appeared before the Committee on behalf of this Chamber on the 3rd instant, to hand you the following statement in connection with the Chamber's answer to question 42 of the questionnaire :—

"On the 28th September, Messrs. Captain and Vaidya informed the East India Cotton Association Limited that their client, Rai Sahib Sangidas Jesiram, had filed a suit against the Board, *i.e.*, Purshotamdas Thakurdas and others, (suit No. 4473 of 1922) and that Mr. Justice Mulla had that day granted their client an interim injunction against the defendants, returnable the following Monday.

The suit was eventually withdrawn by consent precipe after the plaintiff had agreed to apologise to the defendants and to pay costs.

The net effect of the granting of this injunction was that a settlement of Rs. 27 lacs had to be postponed from 28th September to 6th October, which led to a further postponement to 17th October, causing dislocation of business and loss of interest to the whole cotton trade."

2. I am to add that Mr. Grantham believes that under a misapprehension he mentioned the sum of Rs. 1 crore as being the amount involved in the settlement in question and if that is so to ask you to be good enough to explain to the President and members of the Committee that Mr. Grantham was confusing that particular settlement with another case which however did not involve quite the same principle.

I am desired by the representatives of the Chamber who gave evidence before your Committee at their meeting on the 3rd September 1924, to state that, as requested, they laid before the Committee of the Chamber the suggestion made by the Hon'ble Mr. Justice Rankin that it might be helpful to institute "Committees of Creditors" in insolvency proceedings, as is done in England, instead of entrusting the whole work, as is the practice in India, to the Official Assignee.

2. The committee of the Chamber understand that English committees of creditors are usually appointed to assist the trustee in bankruptcy, who is not a Government official but a member of a firm of chartered accountants, or solicitors, or a business man and that the committee of creditors work with him in order that the administration of the bankrupt's estate may be carried through to the best advantage of the creditors. In ordinary bankruptcies it is unusual, my committee believe, for the official receiver to become trustee.

3. In India, on the other hand, the proposed committee of inspection will have to act with the official assignee and my committee feel that until the management of the official assignee's office has been thoroughly overhauled it will be impossible to get suitable persons to serve on such committees. If however the Insolvency Act were amended by permitting the appointment of trustees in bankruptcy in the English sense it might, my committee think, be easier to persuade persons to agree to act as members of such committee, but experience alone can show whether that is so.

Written statement of Mr. GOVARDHANDAS NAROTAMDAS GHAEL, Surat. (Not examined.)

I, the undersigned, a vakil practising at present chiefly in the courts of Surat, most humbly and respectfully beg to state as under which I hope will meet with due consideration at your hands :—

I in this letter wish to speak about one particular item and it is with respect to the maintenance money allowed to the Hindu widows. Generally their husbands' relatives do not allow them any maintenance; sometimes

even distant relations take the property while the poor widows have to beg for their daily bread. When the relatives ignore the demands of these poor widows, they have to file suits and generally the suits are filed *in formâ pauperis*. The widows, being ignorant of the properties left by their husbands, are not able to prove the capacity of the defendants to pay maintenance, and many times nominal sums of Rs. 5 to Rs. 15 per month are awarded to widows as maintenance. I know a case in which the maintenance received by a widow is Rs. 6 per annum, *i.e.*, annas 8 per month or about a pice per day. The monthly expenses in these hard times are not less than Rs. 7½ if the widow has a house to stay in in a village. When widows have to stay in cities they have to pay about 4 rupees for house-rent and their other expenses come to about Rs. 10 at least and so they have to spend Rs. 14 to Rs. 15 at least. Such is the pitiable condition of the Hindu widows.

Their grievances do not even end here. When a decree is passed in their favour, the maintenance money is paid into the courts to be paid to the widow concerned. The widows are not generally informed by the courts, about the payment in court. So they have either to visit their pleaders often and often to inquire if the payment has been made in court; and after knowing that the moneys have been paid into the court, they request their pleaders or their clerks, to recover the amount from the court. If the pleader or the clerk takes up the work the widow has to pay some remuneration to the person taking the trouble and so she does not receive the money awarded to her by the court. Now, if the pleader and his clerk refuse to do the work or die, the condition of the widow becomes still worse, because she has then to appoint another pleader and pay him more or to come to court very often to inquire if the payment is made into court. The court's clerks being busy do not properly attend to her. If the widow be young, many people in the office pass remarks and speak ill words and sometimes they even pass jokes.

After she comes to know that the moneys have been paid into the court, she has to inquire about the day when the moneys are to be got back from the bank or the treasury. On knowing the day, she has to attend the court at about 11 on that day, get her amount entered into the list and wait there up to about 4 o'clock when the bailiff returns with the amount from the bank. In case the widow be staying out of the city in a village distant from the court she has either to depute some one to make the inquiry or to spend train fare and carriage hire and waste money in this way.

These are some of the difficulties of the widows.

I have, therefore, to make the following suggestions which I hope will be duly considered:—

(1) The amount to be fixed for maintenance should depend upon the share in the estate of the husband of a widow passing to the coparcenors or other heirs as stated by Mr. D. F. Mulla (now Judge of Bombay High Court) in paragraph 472 of the third edition of the Hindu Law. No widow should get anything less, if the income from her husband's share is expected to be about 15 rupees per month.

(2) On the money being paid into the court, the court should inform by a service postcard, the widow concerned, about the payment and the clerk in charge should be told to take certificates of posting. If thought fit, this expense which will come to about 9 pies, should be deducted from the amount payable and if the widow desires by a letter, the amount should be sent to her by money order at her expense. Or unless otherwise directed the amount should be sent to the widow by money order at her expense, on its being received into court if her address be known.

If this procedure will be followed in paying the maintenance money, it will be a great help to the poor distressed widows and it will save much

trouble to the party and the pleaders who on paying the amount to the clients have to take receipts from them and to preserve them.

I have been practising as a vakil for the last 2 years and a half only, but as my father and grandfather were also practising as pleaders in the Surat courts, I know some of the difficulties of the Hindu widows and so, being anxious to see the hardships mitigated, I have become bold to suggest as above, which I hope will surely meet with due consideration at your honours' hands.

Written statement of Mr. SHAPURJI SORABJI JOSHI, Bombay. (Not examined.)

With reference to the inquiry before the above Committee for speedy justice both for obtaining the decree and for the execution of the decree, I beg to submit a few observations so far as regards the Bombay High Court on its Original Side as follows:—

1. The writ of summons to be served on the defendant, when once lodged with the sheriff for service under Rule 104 of the High Court Rules, must not be returned to the Prothonotary for amending the returnable date or for minor and formal amendments, but all such amendments must be made in sheriff's office, so that the summons might be served as soon as possible.

2. As regards postponements of suits, under Rule 151 of the High Court Rules, the Prothonotary should grant postponements as is done at present for the first 6 months only from the date the summons is served on the defendant. After six months, the consent precipe for postponement must bear a penalty stamp of Rs. 5 for the first postponement, Rs. 10 for the second postponement, Rs. 20 for the third postponement, and so on till the period of one year from the date of the institution of the suit, but in this case, notwithstanding the penalty charged, the Prothonotary shall have absolute discretion in refusing the postponement and referring the parties to the court.

After one year, the Prothonotary should not grant any postponement whatever, unless there is a commission issued to examine witnesses or there is some such substantial ground.

The usual grounds of postponement in long causes are 1st, that the affidavits of documents are to be made. 2nd, inspection of documents are to be given and taken, and 3rd, negotiations for a settlement are pending.

In the ordinary course, inspection of documents must be finished within four months of the filing of the suit, as the parties have generally the original documents or copies thereof in their possession.

As regards the 3rd ground, *viz.*, "Negotiations for a settlement are pending," it is put forward by the parties to suit their own convenience and thus, delay the hearing of the suit. However, in such cases, the Prothonotary may grant one postponement for a month.

Coming to the postponements granted by a Consent Chamber Order or a Judge's Order, the same should not be granted without fully inquiring into the matter, and if such postponements are granted in cases of suits more than one year old, no order as to costs should be made, as, at present, in all such postponements costs are made costs in the cause.

Now turning to application for postponements made to the judge in court, the general policy of the judges should be to discourage postponements and especially to impose a penalty of about twenty rupees, in case of an application before the court for a second postponement and to increase the penalty in case of subsequent postponements. Here also no order as to costs should be made and the parties must bear their respective costs. At present the general rule is to make costs, costs in the cause, and so the parties feel it comfortable to ask postponements, whereas the burden of paying costs from their own pocket would bring them to their senses and thus hasten the hearing

of the suit. Of course, nothing in the above statement is to restrict the discretion of the court in grantng postponements and in awarding the costs, according to the merits of each particular case.

The best thing for the court to do, while disposing of the applications for postponement is not to grant the postponement, but ask the parties to proceed with the suit and then, if necessary, grant the request if it is impossible to do so without such postponement. I am sure in 75 cases out of 100 the suit will be disposed of at once, as the strong party is always anxious to gain the fruits of the decrees as soon as possible.

When the parties apply for the postponement of the suit on the ground that negotiation for a settlement are pending, the best thing for the judge to do is to call upon the parties to state the proposed terms and basis of such alleged negotiations and try to dispose of the case on such basis or, at the most, grant the parties a fortnight's time (peremptory) within which to settle the suit or to be ready to proceed with the hearing.

Again, it is advisable with a view to save costs, to allow the attorneys to appear in short causes and also for obtaining *ex parte* decrees and postponements just as is now done in summary suits (which are heard in Chambers).

3. Now coming to the delay caused in recovering the money by execution of the decree, it seems that there is a serious defect in the machinery for executing the decree by attachment and sale of the property of a judgment-debtor.

It will be seen from the exhibit hereto annexed and marked A, that it took nearly one year and four months before the judgment-creditor was able to receive the money due under the decree. The judgment-creditor or his attorneys have to attend four officers for executing the decree, *viz.*:

1st.—The Prothonotary.

2nd.—The Commissioner.

3rd.—The Sheriff, and

4th.—The Chief Translator.

There is no reason why a judgment-creditor should be thus driven from pillar to post for recovering his money under the decree. I, therefore, suggest that there should be only one full time officer to attend to the execution of the decrees. All the functions now to be done by the Prothonotary, the commissioner and the sheriff should be done by him and thus there should be a great saving of time and the judgment-creditor will obtain his money in about three months' time from the date he applies for execution.

The office of the full time officer should be in the Prothonotary's office, and the officer must act under the Prothonotary.

The High Court Rules as regards execution of the decrees and especially the Rules referred to in Ex. A, shall have to be modified.

There will also be a question as to the extra expense of the establishment of this officer but this and other details are very easy to settle, in consultation with the Prothonotary and the Rules Committee.

EXHIBIT A.

H. P. *v.* J. K.

Steps to be taken in executing a decree.

1. Application for execution under Order XXI, rule 11 (2), to the Prothonotary under High Court Rule 285.

2. 18th November 1909.

Warrant of attachment of immovable property under Order XXI, rule 54, by the Prothonotary under rules 289 and 294.

3. Write a precipe to Prothonotary for issuing a certificate whether any application received for withdrawing the attachment.

25th January 1910.

No claim received on attachment.

4. 30th January 1910.

We go to the Prothonotary and get the warrant of sale issued in form 57, under Order XXI, rule 64, of the Code.

5. 9th February 1910.

The warrant for sale is then issued by the Prothonotary to the sheriff.

We file a true copy under rule 477, with the commissioner and ask him to issue a notice for claims. Rule 480.

The commissioner issues a notice to claimants. A copy of it should be furnished to the sheriff before it is advertised.

The notice to be published by us in papers and to be affixed on the property, in the High Court and in Collector's Office under rule 480, and then an affidavit to be made for service, etc.

Then inquire from the commissioner whether any claims received, if not issue Proclamation of Sale.

6. 22nd February 1910.

The commissioner issues a summons under Order XXI, rule 66 (4), and rule 478 for title deeds on the defendant, sheriff to serve the summons.

7. 18th March 1910.

Judges order for leave to bid at the auction sale under Order XXI, rule 72, on an affidavit, stating the grounds.

True copy of the order to be sent to the sheriff and commissioner.

8. 23rd March 1910.

The commissioner then issues a notice to us to settle draft proclamation and sends us the draft proclamation. Rule 485.

9. 28th March 1910.

Proclamation settled by us with the commissioner.

Proclamation is sent by the commissioner to the sheriff, under rule 485.

Ask sheriff under rule 390 to insert advertisements in papers.

10. Bataki to be then beaten by the sheriff at the premises in company with our client, under rule 386.

11. 2nd December 1910.

Sale made by the sheriff at the premises under rule 391.

12. 6th December 1910.

The sheriff then forwards a certificate to the Prothonotary of the property being purchased.

13. We then write a precipe to the Prothonotary to issue a certificate whether any claim has been received by him to set aside the sale.

26th January 1911.

The Prothonotary endorses on the certificate of the sheriff that no claim has been received by him to set aside the sale.

14. 30th January 1911.

We should then obtain an order of the court confirming the sale under Order XXI, rules 92 and 94 and section 65 of the Code.

Proceedings must be produced in Chambers.

15. 1st February 1911.

Then write a precipe to the Prothonotary to issue certificate under Order XXI, rule 94, of the Code.

7th February 1911.

Prothonotary issues the above certificate.

It is to be stamped as we do in cases of conveyances.

16. 8th February 1911.

Then write to the Prothonotary to send a copy of the certificate to sub-registrar of assurances under section 89 of the Registration Act, for registering the same.

17. 8th March 1911.

After the sale is confirmed the judgment-creditor can receive his money due under the decree by proceeding under High Court Rules Nos. 300, 301, 302 and 305.

SIND.

Evidence recorded at Karachi.

PRESENT.

The Hon'ble Mr. Justice G. C. Rankin, Bar.-at-Law, Chairman.

The Hon'ble Mr. Justice L. Stuart, C.I.E., I.C.S.

Dr. F. X. DeSouza, I.C.S., Bar.-at-Law.

Mr. T. G. Elphinstone, Bar.-at-Law, Govt. Pleader and Public Prosecutor for Sind, Karachi.

Mr. C. V. Krishnaswami Ayyar, Secretary.

List of witnesses examined at Karachi.

Monday, 8th September 1924.

1. Thawardas Dayaram, Esq., LL.B.	1st class Sub-Judge, Hyderabad.
* 2. Jhamatmal Gulabrai, Esq., LL.B.	Pleader, Sukkur, Representative of the Sukkur Bar Association.
3. Gopaldas Jhamatmal, Esq. . .	Pleader, Hyderabad.

Tuesday, 9th September 1924.

* 4. Kimatrai Bhojraj, Esq. . .	Pleader, Karachi, Representative, Karachi Bar Association.
5. Paramanand Tejumal, Esq., LL.B.	Government Pleader and Public Prosecutor, Larkhana (Representative of the Legal Practitioners of the Larkhana District).
* 6. E. L. Price, Esq., C.I.E., O.B.E..	Representative of the Karachi Chamber of Commerce.
7. Shivrattan G. Mohatta, Esq. .	Representative of the Indian Piece Goods Merchants' Association, Karachi.

Wednesday, 10th September 1924.

8. Thakurdas Naraindas, Esq., LL.B.	1st class Sub-Judge, Sukkur.
* 9. Bhojsing G. Pahlajani, Esq., M.L.C.	Pleader, Sukkur.
*10. Mulchand Khialdas, Esq. . .	Broker, E. D. Sassoon & Co., Ld., Karachi.

Thursday, 11th September 1924.

11. Thilram Maniram, Esq., LL.B. .	Pleader, Karachi.
* 12. R. T. F. Kirk, Esq., I.C.S. . .	District Judge, Larkhana.
13. Jamshed N. R. Mehta, Esq. .	Representatives of the Buyers' and Shippers' Chamber, Karachi.
14. Haridas Balji Lakhmidas, Esq. .	

* Written statement and oral evidence printed.

Friday, 12th September 1924.

15. Parsram Tolaram, Esq., LL.B. . Pleader, Representative of the Legal Practitioners of the Hyderabad District.

* 16. R. K. Shidwa, Esq. . . . Representative of the Indian Merchants' Association, Karachi.

17. Rupchand Bilaram, Esq., LL.B. . Additional Judicial Commissioner, Sind.

Written statement of Mr. JHAMATMAL GULABRAI, Representative of the Sukkur Bar Association.

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1. A (*ii*)

1. Small causes	3 months.
2. 2nd class	6 to 12 months.
3. 1st class	12 to 18 months.

District Court.

1. Original suits	6 to 12 months.
2. Regular appeals	6 months.
3. Appeals from orders	3 months.
B Claim proceedings in civil courts & District Court .	3 to 6 months.

2. Yes; the main causes are the uneven distribution of territorial jurisdiction (*ii*) undermanning of the department and (iii) inefficient judiciary.

3. Greater personal attention on the part of the presiding judge to look into matters and the frequent use of Orders X and XII, C.P.C., particularly Order X.

4. Yes; all judges should be recruited from the Bar. No age-limit should be prescribed for subordinate judges. Recruitment from the I.C.S. should be stopped. But if that is not possible, a recruit from the I.C.S. should be made to work in a subordinate civil court for at least 3 years. Questions of policy should not be allowed to influence the making of appointments. A candidate for a subordinate judgeship should have at least 5 years' substantial practice at the Bar. Drafting of pleadings should be insisted upon as a qualification in subordinate judges.

5. We have no district munsifs in our province.

6. Transfers are not too frequent in our province. But too frequent transfers have a tendency to impede justice.

7. The present method of judging the efficiency of a judge from the number of cases disposed of by him, as shown in the returns, is misleading. The number of judgments, particularly the quality of judgments, and the amount of work turned out every day should form the test of the efficiency of a judge.

8. No.

9. Yes.

10 and 11. We have no district munsifs in Sind.

12. No.

13. Ordinarily there will be no objection if subordinate judges of merit are invested with jurisdiction to try matters referred to in Q. 13. They will no doubt give greater satisfaction. But the present method of recruitment does not hold out any hope in this direction. Only selected officers should be invested with such powers.

14. No.

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* Written statement and oral evidence printed.

15. No. There is no objection to suits to enforce simple mortgages by sale of immoveable property being dealt with by small causes courts, provided the value of the suit does not exceed the pecuniary jurisdiction of the court.

16. No.

17. No.

18. No.

20. No. The right should not be curtailed as suggested.

21. No. This will in many cases shut out 2nd appeals. Instead, security may be taken but not as required by appendix G. to the Civil Procedure Code form no. 2; compelling a surety to mortgage his property is practically to scare away the surety.

22. Yes.

23. No. (1) Security may be taken as suggested in Q. 21.

(2) No revision petition should lie.

24 and 25. The present method of serving summons is faulty. Unless the bailiff is tipped, he does not effect service. He penalises the party by making him pay fresh process fee if he is not tipped.

Remedy (*i*) (*a*) No process fee should be levied at all.

(*b*) In the event of non-service of process, no process fee should be levied.

(*c*) Higher court fee may be levied at the institution of the suit. An increase of 1½ per centum in court fee will perhaps make up the loss arising from doing away with the process fee.

ii. Service by registered post may be simultaneous. Witnesses may also be served by registered post. The postman may make an affidavit of service before the postmaster. Efficient service on the part of the bailiff may be rewarded by a small commission and special promotion. Quarterly reports of the working of the bailiffs may be submitted by the nazir.

iii. Substituted service may be encouraged. After return of summons twice unserved, substituted service may be ordered as a matter of course.

iv. Not more than two adjournments may be granted for filing the written statement. Further adjournment may be granted on payment of Rs. 5 to 15 to the opposite side, costs to be paid in cash with the application for adjournment.

v. The diary must be so adjusted as to dispose of work fixed for the day. The judge may give attention to this matter personally.

vi. If a judge goes on leave or for any cause finds that work cannot be proceeded with, timely notice should be sent to parties and witnesses. This will save costs.

vii. Delay in execution is more deplorable. System of returns is responsible for this delay. Judges do not pay so much attention to execution work as to original suits for their work is judged from the disposal of original suits.

viii. Adjournments in execution matters may be granted on the same terms as in original suits.

ix. At least one full day in a week must be set apart for execution work.

Procedure under S. 106 T.P.A. may be given a trial.

26. Forms of plaints given in the C.P.C. are generally followed. Costs will be sufficient penalty.

27. Yes.

28. Yes. The village officer may be used. He may make an affidavit before a magistrate.

29. Yes.

30. This is done in Sind.

31. Greater personal attention of the judge ; frequent use of Orders X and XII C.P.C. and discouraging vague pleadings or in other words strict compliance with Orders vi, vii and viii.

32. Not Order XI ; Orders X and XII are neglected. Greater personal attention on the part of the judge will remedy the evil.

33. Yes.

34. Yes.

35. It depends upon the judge. Costs of witnesses who ultimately prove nothing should be specially borne by the party calling them. In addition to that a sum of Rs. 5 to 15 may be allowed to the opposite party.

36. Affidavits should not be the primary mode of proof.

37. No. It will be a dangerous weapon in the hands of a judge who is averse to doing work or who has not a too sensative conscience or who is arbitrary.

38. No.

40. No.

41. Yes. Procedure suggested will save time. Notices to all possible guardians may be sent on payment of one fixed court fee, say, 0-8-0, irrespective of the value of the suit.

42. It is not taken undue advantage of.

43. We suffer from short judgments.

44. As a rule they are.

45. Original by judges and adjourned by the office. We have no grievance on this point.

46. Yes.

47. No. Commissioner should have power to control examination. He should not be treated as a mere deposition-writer. As far as possible senior pleaders may be appointed to execute commissions for the examination of witnesses. *Viva voce* examination should be encouraged.

48. Yes it will be, provided costs are paid forthwith. Costs should be accompanied by the application for adjournment. In addition to the day costs reasonable compensation to the opposite party may be allowed.

49. Yes, they are tried from day to day.

50. The impression is that it does not.

51. No.

53. Yes.

54. Yes.

55. Yes.

56. (*a*) No. (*b*) No. (*c*) Yes. The suggestion is nice.

57. The present language may be allowed to stand.

58. The suggestion may be carried out.

59. Yes. The proviso should not be deleted. But it should be brought out clearly that the decree should be a joint decree and passed personally against the defendants.

60. No.

61. Notice is necessary when execution is sought against the legal representative. Notice is necessary in case of arrest even though execution is applied for within 12 months of the decree except when the judgment-debtor has no property within the jurisdiction of the court or is about to leave the jurisdiction of the court. In case of attachment no notice is necessary.

62. Yes, it will work hardship. No change is required.

63. One notice is sufficient.

64. Yes. They should not; proclamations should be drawn up in the presence of the judgment-debtor. No; does not arise.

65. No.

66. (*a*) Yes.

(*b*) Yes.

(*c*) Yes, even though the plaintiff does not desire.

(*d*) Yes.

(*e*) Usually 6 months. Final decree should be passed forthwith. Personal decree should also be passed at the same time.

67. No. Does not arise. Yes. Compensation not exceeding Rs. 1,000.

68. No. Security may be taken.

69. Not necessarily. There is not much delay. Subordinate judges are invested with insolvency jurisdiction.

70. No. Arrest or attachment before judgment does operate effectively to prevent delay.

71. No.

72. Yes. Attestation by an attesting witness, as in probate proceedings, may be insisted upon.

73. Yes.

74. Articles 146 A and 148 should be amended so as to reduce the period to 12 years.

76. No.

77. Yes.

78. It practically does. But it is equitable.

79. Yes. The cost should be uniform as suggested.

80. If the document bears a thumb impression it may be accepted.

81. The present law as to benami may be allowed to stand.

82. No. Compensation not exceeding Rs. 1,000.

83. Yes. Sales and leases should likewise be attested.

84. The present law as to maintenance and champerty may stand.

85. No.

86. Yes. In place of the I.L.R. only one publication may be brought out under authority of each of the High Courts. To discourage other publications they shoud not be accepted.

87. It will be useful to codify Hindu Law.

Mr. JHAMATMAL GULABRAI, Representative of the Sukkur Bar Association, called and examined on Monday the 8th September, 1924.

Dr. DeSouza.—*Q.* You represent the Bar Association of Sukkur ?

A. Yes.

Q. How many members are you there ?

A. We are 59.

Q. What is your experience of the Bar Association at Sukkur with regard to touting ?

A. It is not rampant in our district.

Q. But severe action was taken by one of your district judges and I think a certain number of men were reported as touts to the Judicial Commissioner's Court ?

A. I do not know the exact number, but I believe four or five people were reported against and three of them were declared as touts.

Q. On what did the district judge take action ?

A. On the report of the subordinate judge at Shikarpur.

Q. Did the Bar Association have the initiative in any of these proceedings ?

A. No.

Q. Do you not think that the Bar Associations should be more alert to take action against touts, in their own interests ?

A. Yes, the Bar Association might be more alert.

Q. What is your idea about the prevalence of touting in courts other than those in the Sukkur district ?

A. I have no idea because I have no experience of those courts.

Q. What about the petition writers, do they some time act as touts ?

A. Not as a rule.

Q. What are the qualifications of a petition writer ?

A. No particular qualifications are prescribed, but generally in the beginning they work with some old and good hands, and then in the course of time they themselves are appointed petition writers.

Q. What about the bond writers ?

A. They have nothing to do with the drawing up of the pleadings. They solely devote their attention to the bond writing.

Q. Do they draft most of the conveyances and the written instruments which are registered in the sub-registrar's office ?

A. In the mofussil most of these things are done by the bond writers.

Q. And does not the language which is used in these conveyances lead to a great deal of litigation ?

A. There are good many competent bond writers and as a rule the bond writing is done carefully.

Q. Do you find that want of training of the bond writers leads to much litigation ?

A. Not very much.

Q. Would you be in favour of a suggestion that this class of bond writers should be trained and that they should be licensed ?

A. That will be preferred.

Q. Of course in that case they will necessarily raise their fee ?

A. I should think so.

Q. Do not people go to the lawyers when bond writing of that kind is to be done ?

A. Now people are realising the importance of having these documents written by the lawyers.

Q. I believe the only reason why they do not go to the pleader is because they have to pay a heavier fee ?

A. That is true.

Q. But they do not realise that a rupee or two spent extra will save a hundred rupees afterwards ?

A. Yes.

Q. In Sukkur district they are beginning to realise this and people are now resorting to pleaders for the purpose of having the mortgage deeds, sale deeds and other conveyances drafted ?

A. Pleaders are more resorted to now than formerly

Q. But still there is room for improvement ?

A. Yes.

Chairman.—Q. Do these people draw plaints sometimes ?

A. The petition writers attached to the court and not the bond writers.

Q. Are the bond writers permitted to sit in the court's precincts ?

A. No.

Q. How can you manage to license them ? What is there to prevent a person from carrying on business as a bond writer in the bazzar ? It is rather difficult to license them except as regards those who want to ply their trade in the court's precincts.

A. I quite agree.

Dr. DeSouza.—Q. Might it not be possible to say that no document will be registered unless it is written by a licensed bond writer ?

A. That cannot be practicable in the mofussil.

Q. But the sub-registrars' offices are generally frequented by these bond writers and it is only there that they have to be registered ?

A. But sometimes the sub-registrar has to be called at home.

Q. In such a case it will be difficult to get a bond writer, who is generally to be found in the town ?

A. Everything is finished in the village and then the document is taken to the sub-registrar's office.

Q. Turning to another point, I see that you have a great deal of complaint about the service of processes. What is the nature of your complaint ?

A. The process-servers sometimes avoid serving because they get a higher commission from the defendants. So far as witness summonses are concerned, they are served without any delay.

Q. With regard to service of witness summons there is no complaint ?

A. More or less.

Q. It is only with regard to service of defendant summons ?

A. Yes.

Q. And that is due to the natural tendency of the defendant to evade service ?

A. Yes. You may say so.

Q. What remedy would you suggest for improving the service of processes on the defendant ?

A. Simultaneous service by registered post.

Q. Side by side with the service by the court's peon, the letter would go by registered post ?

A. Yes.

Q. In some provinces they adopt this method. That service in the first instance would be by registered post, and if the defendant appears on the day fixed then it is all right, but if the defendant does not appear then a process would be served through the agency of the bailiff. What do you think of that ?

A. I would say that the service by the process-server and the service by the registered post should be simultaneous.

Q. In the Punjab they adopt that method. In Madras they reverse the order. They first resort to summons through the bailiff and if it fails then they serve the summons through registered post and that is the second alternative. You suggest the third alternative, that it should be simultaneous ?

A. Yes, because that will save time.

Q. Is service by post resorted to frequently in the town of Sukkur ?

A. Not frequently.

Q. Is it only made on the application of the party ?

A. Yes.

Q. What is the result of service by registered post in the Sukkur district ?

A. It is effective.

Q. But is it only confined to the headquarters town ?

A. In larger towns where people can be found without any difficulty and not in the interior.

Q. In what towns is it now used ?

A. In Taluqa towns such as Shikarpur, Jacobabad and Rohri.

Q. Do you not think that the postal peon is as liable to corruption and suspicion as the bailiff is ?

A. I think so.

Q. Then where is the force of the remedy that you suggest ?

A. If the process-server serves the defendant and also the postal peon then you can rely upon one or the other.

Q. You make a suggestion that in order to ensure better service, no process fee should be allowed at all ? You would abolish it altogether ?

A. It happens in this way. The bailiff sometimes does not get his commission from the plaintiff and in order to punish him he returns the process as unserved and the result is that the plaintiff has to pay process fee for the second time, but if the process fee is done away with, he can not penalise him.

Q. He can penalise him for getting some bakhshish. If the plaintiff pays him four annas then the defendant can pay him eight annas and get his purpose served ?

A. Very likely.

Q. I do not see how your remedy would serve the purpose ?

A. In some cases it may prove useful.

Q. Is it a frequent occurrence that the bailiff never goes to the village and makes a return from the headquarters ?

A. He does so but on very rare occasions. He generally goes to the village because he has the temptation of having some commission from the party who takes out the process. He does make an attempt.

Q. Have you got an idea of the percentage of pesonal service in a court like Sukkur ?

A. I think it will be about 75 or 80 per cent.

Q. Would you call that unsatisfactory service ? Is it not reasonable to think that in the remaining twenty per cent. the defendant on account of certain reasons may not be in the village and so he could not be served ?

A. In Sindh the practice is that the bailiff is accompanied by the party or his agent when he goes out to serve a process.

Q. Is it always necessary for the party or his agent to accompany the bailif. Is it necessary that there should be an affidavit of the identifier for the purpose of verifying service ?

A. As a matter of rule the party does accompany the bailiff and there are affidavits both by the bailiff and the identifier.

Q. Is it the practice that in every case the bailiff does not leave for the village unless an identifier accompanies him ?

A. So far as the interior is concerned the bailiff goes to the party first and then goes to the place where the defendant has to be served, and effects service. But I think it is not necessary for the party to accompany the bailiff because he will be in a position to find out the man on whom the process has to be served.

Q. If the address is properly given, and I take it the registrar sees that the address is given properly, would it be difficult to find out where the defendant lives ?

I do not think it should be difficult. Can he not get the assistance of the Mukhia or the village headman ?

A. The difficulty is that village headman is not always available in the village, but there seems to be no reason why he should not find out the man and serve the process on him.

Q. Are villages in Sind scattered, I mean are they sparsely populated ? What is the population ? Is it more than 500 ? I do not think it is above 500 in many of the villages.

A. In some cases it is above 500 but generally it is less than 500. So far as the mofussil is concerned affidavit of the party or his agent is insisted upon ?

Q. Do you not think that it is an unnecessary provision which creates great delay and causes extra trouble and expense to the plaintiff ? Do you not think that this system of always taking an identifier, which apparently prevails here, should be discontinued ?

A. Yes it may be discontinued because it will save a lot of time, worry and expense to the plaintiff.

Q. If there is less effective service, then it is a question of better supervision ?

A. Yes.

Q. What kind of supervision would you suggest ?

A. I think if the bailiff is somewhat smart he may be given special promotion.

Q. There are two ways of encouraging bailiffs—One is of giving commission and the other is of punishing the least efficient man. Do you not think that the man who is at the bottom should be punished?

A. That may also be done.

Q. I suppose no returns are sent by your nazir at all.

A. I think not.

Q. Neither to the district judge nor to the 1st class subordinate judge ?

A. Yes.

Mr. Justice Stuart.—*Q.* Is not the real difficulty that the supervision is quite inefficient ?

A. Yes.

Q. If you improve the supervision you would probably improve the bailiffs ?

A. Yes.

Q. After all the civil court's bailiffs are no worse in character than the other men of the same class, yet we find that in the Revenue Department the service is much more satisfactory ?

A. Yes.

Q. Because the revenue process-server is better supervised and if he does not do the work properly he is punished ?

A. Yes. Policemen also serve their processes effectively.

Dr. DeSouza.—*Q.* Does the same remark apply to the Mukhtar kar peons ?

A. Yes.

Q. The villages where they serve the processes are as remote as those where civil processes are served ?

A. Yes.

Q. Why then should there be such a difference ?

A. Lack of supervision.

Q. Do you know what is the nature of supervision on the Mukhtar kar peons ?

A. I don't know.

Q. In revenue cases you never hear any complaint ?

A. No, they are served at the first time.

Q. How many courts have you in Sukkur at the headquarters ?

A. We have a district judge, a joint judge and a first class subordinate judge invested with sessions judge's power. Then we have one 1st class subordinate judge at Shikarpur and one second class subordinate judge each at Sukkur, Rohri and Jacobabad.

Q. Then at the headquarters you have five courts.

A. Five courts but three judges. One district judge, a joint judge and then a first class subordinate judge invseted with sessions judge's powers.

Q. Have you no second class subordinate judge in Sukkur ?

A. We have one but only for three months.

Q. That, I understand, is going to be discontinued ?

A. I don't know.

Q. You practise in the district court ?

A. Yes.

Q. I find that in the year 1923 there were 26 original suits instituted out of which 13 were disposed of and out of these 13 only three were contested and 13 are pending. What is the nature of these suits ?

A. They are suits against the manager of estates and against the Secretary of State.

Q. Here I notice that some of the 26 suits instituted were against the Secretary of State and some against the manager of encumbered estates but is there any reason why suits against the manager should be heard and tried by the district judge ? Had those been against other persons they would have been tried by first and second class subordinate judges but simply because they are against a government officer who is in charge of the estate, they should be heard by the district judge. Do you see any particular reason for that ?

A. There is no reason for that at all.

Q. Would you be therefore in favour of—so far as your association is concerned —amending the Sindh Civil Court Act ?

A. Yes, the Bombay Civil Court Act.

Q. You know in Bombay the Act has been amended so as to make the suits against the Court of Wards triable by a first class subordinate judge ?

A. Even here that is so.

Q. What do you think about the cases against the Secretary of State for India in Council ?

A. I think these suits may also be tried by the subordinate judges.

Q. You have no objection to that ?

A. No.

Q. In Bombay they objected to this very violently. Here you have no objection ?

A. No. As a matter of fact this work was purposely given to the district judges in this part.

Q. On what grounds ?

A. It is said that if the original suits are withdrawn from the district judges they will have no experience of original suits.

Q. That can easily be remedied. He can have some suits from the subordinate judge. Is there any other reason ?

A. No.

Q. Is there any congestion of such class of suits ?

A. I don't think so.

Q. Another very curious thing is that, in spite of the fact that these suits are tried by the district judges, out of 13 suits only three were contested and the rest

were not contested. If the nature of the litigation is such there is no reason for giving them the highest tribunal in the district ?

A. None.

Q. Who does the first appeals in your district ?

A. District judge and the joint judge.

Q. Who is your joint judge now ?

A. Mr. Chani Ram.

Q. Is he not the 1st class subordinate judge? ?

A. He is not in that cadre.

Q. Has your district judge time to do civil appeals ? I understand that he has only time to do sessions work.

A. Yes, there is plenty of sessions work.

Mr. Justice Stuart.—Q. When do you expect an appeal to come up for hearing after the date of its institution ?

A. As soon as the respondent is served.

Q. Surely not. Do you mean to say that the appeals are heard as soon as respondents are served ? Is it not a fact that you do not have your appeals disposed of even within a year ? Do you not think that a man is lucky if his appeal is disposed of within 18 months ?

A. I should think so.

Dr. DeSouza.—Q. What appeals are now put up on the board ? Appeals of 1922.

A. No, of 1922 and 1923.

Q. Some of 1921 too.

A. Very few.

Q. I find that these returns do not show how many appeals were disposed of by the district judge and how many by the joint judge ?

A. We got the joint judge only in 1924.

Q. And that joint judge was appointed owing to the accumulation of appeals ?

A. Accumulation of sessions and appeals.

Q. I find that in this province Order XLI, rule 11, is very rarely used by the district judge. What is the procedure with regard to appeals when they are first filed in the district court ?

A. They are presented to the clerk of the court who submits them to the district judge for orders. Then the district judge decides what appeals should be fixed for summary hearing under Order XLI, rule 11.

Q. Does he fix a considerable number ?

A. A limited number.

Q. What happens to those that are fixed under Order XLI, rule 11 ?

A. As a matter of course they are more or less admitted. If an arguable point is presented before the judge he admits them.

Q. Is the nature of the litigation in the Sind province such that there would be an arguable point in practically every first appeal that is presented ? I find that out of 470 appeals that were presented in the district court only 19 were dismissed under Order XLI, rule 11, and that compares very very unfavourably with Bombay where out of a total number of 4,300 more than 700 were dismissed under Order XLI, rule 11. Is it because the district judge does not find time enough to go through the judgment so as to know what appeals can be really disposed of under Order XLI, rule 11, and what appeals should be necessarily admitted ?

A. I suppose he relies on the weakness of the judgment.

Q. But still when they come on for hearing he confirms a very large number of them ?

A. That is probably when he has heard the other side.

Q. Is it the respondent's pleader who gives strength to the case ?

A. More or less.

Mr. Justice Stuart.—*Q.* Do you find that the amount of land acquisition litigation is increasing very largely in your district as a result of the Sukkur barrage scheme ?

A. Yes it is increasing.

Q. Is any attempt made to cope with that increased work ?

A. The suits have not yet arrived. I believe up till now only forty references have been received by the district judge.

Q. How have they been delayed ?

A. Perhaps the claimants have not been served.

Q. But those are the people who put in objections ?

A. But the case is sent on by the land acquisition officer to the district court.

Q. Is not the reference made because the claimant refuses to accept the award. Surely service on such a claimant takes a very short time ?

A. But the land acquisition officer has been able to dispose of matters only recently.

Q. I have heard a good many of land acquisition cases, and they came up for hearing within a month. I never had the slightest difficulty in having the claimant served. He is not an elusive person, he wants to receive the notice as quickly as possible. So if they take a long time in serving notices, it must be due to the fact that the machinery is not good ?

A. But so far as the land acquisition matters are concerned, references have been received very recently. My opinion is that about forty have been received.

Q. Has any attempt been made to meet the situation, to send an extra man to hear these cases ?

A. I do not know the arrangement.

Dr. DeSouza.—*Q.* I think the number of such cases in Sukkur is very very few so far ?

A. Yes.

Q. And so far as I know there are not many cases in Hyderabad ?

A. I have no experience of Hyderabad.

Q. So the question has not become so acute. It is only two or three years hence that the question might become acute ?

A. Yes.

Q. I see you say that one fruitful cause of delay is the facility with which the adjournments are granted by the courts, and you begin with the facility in giving adjournments for filing written statements ?

A. Yes.

Q Are adjournments on this account granted as a matter of course ?

A. Yes ordinarily.

Q. In all class of cases ?

A. Generally.

Mr. Elphinstone.—*Q.* Even if it is opposed by the other side ?

A. Sometimes they are granted in spite of opposition from the other side.

Dr. DeSouza.—*Q.* I take it that the first date fixed for the filing of the written statement is six weeks or two months from the institution of the suit.

A. It would not exceed two months.

Q. And on that date the defendant generally asks for more time and that is granted ?

A. Yes.

Q. About a fortnight is given ?

A. Generally.

Q. And on the expiry of that, the defendant asks for more ?

A. Then he appears by the pleader.

Q. The pleader says that he has just got instructions and so he wants time ?

A. Yes.

Q. And further time is granted as a matter of course ?

A. Yes. He gets two adjournments.

Q. Why two ?

A. I do not know, that is the practice.

Q. Then, when is the written statement finally given ?

A. Within about three to six months of the service.

Q. That is a wide margin.

Mr. Elphinstone.—*Q.* Do these delays in filing the written statement delay the disposal of the suit ? Is the suit likely to come on for hearing within that time ?

A. Yes. Parties know the grounds and sometimes matters are compromised or referred to arbitration.

Dr. DeSouza.—*Q.* In this respect you of course have experience of litigation against Government. Well in these cases is Government not the greatest offender ?

A. Yes, because the Secretary of State always has very long adjournments for filing written statement.

Q. How long does it usually take for the Secretary of State to file his written statement finally ?

A. I think it will come to about a year.

Q. Is it not up to the judges to take action against the Government ? I have very often taken action. I have many times told the Government pleader to file the written statement within three months failing which I would proceed *ex parte*.

A. That all depends upon individual judges.

Q. You suggest that in order to make these delays less harassing you would penalise them by insisting upon the deposit of Rs. 5 or Rs. 10 in cash for each adjournment. How would you dispose of that cash ?

Q. That will be very effective according to us and the cash should go to the other party.

Q. What would it represent ?

A. It would pay the plaintiff for the inconvenience and trouble he has to undergo in coming to the court.

Q. Is it necessary for the plaintiff to attend court at the time of the filing of the written statement ?

A. Ordinarily the plaintiff does attend.

Q. What would you do with regard to adjournments which are granted for the convenience of the parties or pleaders ? Would you also be in favour of compensating the other party by compulsory deposit of Rs. 10 or Rs. 15 ?

A. Sometimes adjournments are granted for the convenience of the parties and I would be in favour of the same suggestion in this matter. Look at the inconvenience to the other side and for that inconvenience it must be compensated.

Q. What would Rs. 10 or Rs. 15 represent ? Would that represent the batta to witnesses ? Your point is that something substantial should be paid to the other side in order to compensate it.

A. Whether it is the plaintiff or it is the defendant, he must be compensated.

Q. Would you fix a definite figure ?

A. Anything between Rs. 5 and Rs. 15.

Q. Would it always work satisfactorily in every calss of case because in petty cases, the whole of the pleader's fee would not come to Rs. 15 ?

A. That is why I have suggested Rs. 5.

Q. Rs. 5 is a very low figure. It does not represent the actual costs ?

A. It will not in many cases represent the actual costs; it will represent the trouble and inconvenience and therefore I will suggest the same remedy as I have suggested in the case of the filing of written statement.

Chairman.—Q. When a case is once put down for hearing, is it easy to get an adjournment ?

A. Yes.

Q. And in consequence of that has the man to bring his witnesses again and again on different dates ?

A. Yes.

Q. How many cases in your experience does the judge put down for trial on the same day ?

A. I have known first class subordinate judges putting down as many as 10 to 15 first class cases.

Q. Now, would you like to do something to put down this practice by which the public is put to so much inconvenience and trouble and expense by bringing their witnesses to the court several times ?

A. Yes.

Written statement of Mr. KIMATRAI BHOJRAJ, Representative of the Karachi Bar Association.

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1. The duration of the original suits of commercial nature should not exceed eight (8) months and of other suits 12 months.

The duration of first appeals should not exceed 12 months and of second and miscellaneous appeals 6 months.

2. The period actually taken now for the disposal of these matters does exceed these limits. The main causes of delay are these (*i*) defective procedure, (ii) unpreparedness of the parties, (iii) the various tactics adopted by the dishonest defendants to protract proceedings and (iv) insufficient efficient staff.

3. Remedies are suggested in the following answers to further questions.

4. *All* judicial officers, *i.e.*, subordinate judges, district, additional and joint district judges, judges of the courts of the judicial commissioners, chief courts and High Courts should most certainly be recruited from the Bar. The appointments to the 3 latter courts should be by selection and not by routine promotion. Proceedings would also be greatly speeded up if superior posts in the courts' offices were recruited either from the Bar or at least from men of education and ability. The present system of filling these posts by promotion from clerks who join on the lowest grades and have only poor education and abilities is unsatisfactory. Promotion of such men to responsible posts should be the exception and should only be done in cases of marked ability.

5. We have no district munsifs in our province. Subordinate judges should be appointed on probation for two years before being confirmed in their posts.

6. No.

8. Not in our province.

9. Yes, the jurisdiction of the provincial small cause courts should be enhanced. Suggestions on the point are made in answer to question No. 15.

12. No.

13. Yes. As the subordinate judges in our province are very hardworked, it will not conduce to efficient and speedy disposal of original suits if they have to do other work.

14. The panchayats in our province are not sufficiently developed and efficient enough to perform any judicial work.

15. I suggest that provincial small cause courts should be invested with jurisdiction to try all ejectment suits between landlords and tenant where the subject matter of the suit for the purposes of jurisdiction does not exceed the pecuinary jurisdiction of small cause courts trying such suits. I further suggest that the provincial small cause courts may also try suits relating to partnerships where the capital of the partnership does not exceed its pecuniary jurisdiction.

16. I am not in favour of this. But district and joint judges and first class subordinate judges may be invested with powers to try cases under chapter 37 (summary procedure on negotiable instruments) of the Civil Procedure Code.

17. I am not in favour of this.

18. No.

20 and 22. Many frivolous second appeals are filed, but I am of opinion that the existing rule should stand. There is sufficient check in the provisions of Order 41, Rule 11, which in our court is properly enforced.

21. No.

23. No. I am of opinion that the enforcement of the deposit of decretal amount will act harshly on litigants. So far as interlocutory orders are concerned they are as a rule not revised by our Court here unless exceptional circumstances are shown. I am of opinion that the Court's power to revise interlocutory orders in exceptional circumstances should be preserved.

24. Suggestions are given in answers to Nos. 31, 32, 34, 35, etc.

25. I am of opinion that courts may be empowered to send summons to defendants within British India in suitable cases by registered post.

26. In our courts the forms of plaints given in the Civil Procedure Code are generally adhered to.

27. No.

28. See my answer to Question 25.

29. Yes.

30. I am in favour of the suggestion.

31. The existing provisions are sufficient but the courts in this province generally accept issues framed by the parties. I am of opinion that the court itself should frame issues and the provisions of the Civil Procedure Code as to the examination of the parties and their pleaders at the time of framing issues should more extensively be taken advantage of. If this is done, much time will be saved.

32. No, but more use might be made of these orders.

33. No.

34. No. I suggest that when Order 16, rule 16, clause 1, is not followed, the witnesses should be required to leave their addresses with the sheristadar of the court and all future notices should be sent to them at those addresses by registered post. If they change their address they must notify the same to the court or be liable to fine.

35. Yes. I would suggest that the provisions of Section 35A of the Civil Procedure Code relating to penal costs should be extended to this province.

36. In these matters and in guardianship proceedings proof by affidavit should be allowed subject to the right of the opposite party to cross-examine deponents. Prepayment of special costs should not be required, that is to say no change is required in the law.

37. I do not agree with this suggestion.

38. The provisions of Order 37 may be extended to suits on mortgage and money bonds and the period of limitation should be extended to 12 months, which in the case of mortgage suits should be calculated from the first failure to comply with a demand for payment of the money sued for.

39. I think the manager of a joint Hindu (Mitakshara) family should be sufficient to sue and be sued as representative of the family. In the case of joint family business, the member in charge of the kothi in question should be sufficient to represent the whole family.

40. I am of opinion that courts may be empowered to dispense with the bringing in of all legal representatives of a deceased party if the court is of opinion that the estate of the deceased party is sufficiently represented by the representatives already on record.

41. Yes.

I agree with this suggestion. I further suggest that courts may be empowered to dispense with service of notices on minors of tender age.

42. It is taken advantage of. I therefore suggest that courts may, before granting *ex parte* injunctions, in suitable cases insist on security being furnished and courts must see that the injunction cases are heard at as early a date as possible.

44. Yes.

45. No. Our rules provide that the boards of judges of the Judicial Commissioner's Court should be setttled by the registrar.

No. I would however suggest that the rule that suits should be tried from day to day, should be strictly adhered to. Unfortunately this rule is not always adhered to in the courts here.

46. No.

47. Yes. We have already got a rule that ordinarily commissions should issue on interrogatories. To check the evil I would however suggest that a court may order security being furnished to such extent as it thinks fit before granting a commission in cases where it is of opinion that the commission is applied for to protract proceedings.

48. No. The payment of day's costs is not sufficient to prevent frivolous applications for adjournments.

49. See answer to question No. 45.

50. No. The district judges in our province are very hardworked officers. I would suggest that special district judges should be deputed each year to do the work of inspection of the lower courts. I may also point out that so far as our province is concerned the Judicial Commissioner does the inspection work for a month and a half every year. I would suggest that this period should be extended to three months. The present system of submitting returns is most objectionable and does not achieve the object with which it was introduced, *viz.* :—to expedite the disposal of suits. The courts become anxious to dispose of small suits and leave difficult and complicated cases to their fate or compel the parties or their pleaders to refer such suits to arbitration or settle them outside court.

51. I agree that commercial suits should be given preference over other suits. I would suggest that an early hearing should be fixed for such suits and that on each day if there are any commercial suits on the list they should be tried in preference to other suits. If there is a large number of commercial suits pending in a court, special days may be fixed for their disposal.

54. I agree with this suggestion and I would further suggest that applications under Order 21, rule 50, clause 2, may also be disposed of by the courts to which decrees are transferred for execution.

55. I agree with this suggestion. So far as the courts of this province are concerned there is a decision of a Bench of the Judicial Commissioner's Court that the proceedings taken by a stranger-purchaser are governed by Section 47. As

however there is a conflict of authority, clear provision to this effect should be inserted in section 47.

56. I do not agree with the suggestions (*a*) and (*b*) but I agree with the suggestion (*c*). I am however emphatically of opinion that the decree-holder should be allowed to execute his decree at any time he finds it convenient to do within 12 years' limit.

57. I agree with this suggestion.

58. I do not agree with this suggestion as it will work hardship on illiterate people in the mofussil.

59. I agree with the suggestion contained in the first part, I however think that deletion of second proviso to rule 16 of Order 21 will create complications. If it is deleted courts should be empowered to adjust equities between the parties.

60. I am of opinion that no change in the existing law is necessary.

61. Yes. So far as our courts are concerned it is already made part of notice of the execution petition.

(*b*) Yes.

62. I do not agree with these suggestions.

63. No.

64. I agree with these suggestions. The judgment-debtor may when served with summons in a suit or at the first or any subsequent hearing, be required to leave his address with the sheristadar of the court and notices may be served by registered post at such address or at any fresh address given, throughout the suit and execution proceedings.

65. No.

66. I do not agree with the suggestions *a*, *b*, *c* and *d*.. In our province there is no system of granting certificate of encumbrances. As to (*e*) Yes. In suits relating to small amounts it is not necessary to give six months' time for redemption. Unfortunately in the courts here six months' time is granted in all cases. In a simple mortgage suit there is no necesisty for a final decree or a separate personal decree.

67. No.

68. Yes.

69. The present law of insolvency is quite inadequate and affords protection to dishonest insolvents. The provisions of Sections 69 and 70 of the Provincial Insolvency Act should be made more stringent and re-enacted on the lines of section 476 of the Criminal Procedure Code. Further where the court deals with the dishonest conduct of an insolvent it should not have to resort to the cumbrous procedure enacted in these provisions and should deal with the matter in a summary way. The present right of appeal against the decision of the Insolvency Court in such a matter should be retained as it exists in section 476, Criminal Procedure Code, but not further.

70. The present provisions for attachment before judgment are not adequate. I would suggest that wide discretion should be given to courts to order attachment even where no dishonest intent is established and where the court is of opinion that if attachment is not ordered the plaintiff will not be able to reap the fruits of his decree if one is made in his favour. But the plaintiff in such a case should satisfy the court that he has a *prima facie* case.

72. I agree with this suggestion that the registered deed of mortgage should be presumed to be valid and to make the person who disputes its validity to prove his case. But where the deed is not registered an attesting witness should be called.

73. I agree with this suggestion. I would further allow secondary evidence consisting of commercial documents such as *Force Majore* certificates to be given by consent of parties.

74. The Law of Limitation is already stringent.

75. I would suggest that section 35A of the Civil Procedure Code enacted by Act 9 of 1922 should be extended to Sind. (2) Courts may be empowered to order security for costs to be furnished by the plaintiff and security for such amount not exceeding the claim and costs in suit to be furnished by the defendant in cases where the court is of opinion that the suit or defence is a frivolous one. (3) Suitable rules to enforce payment by garnishees of attached debts without recourse to suits on the lines of Order 45 of the Supreme Court Rules may be enacted. (4) At any time after an execution application is presented if the decree-holder so desires, the judgment-debtor may be examined by the court or such officer as the court appoints in his behalf as to his dealings and properties. This provision to apply also to the enforcement of awards filed under the Indian Arbitration Act. (5) When the court disposes of an application under Order 21, rule 58, against the applicant it may be empowered to require the applicant to furnish security for such amount not exceeding the decretal amount and further costs as it thinks fit, as a condition precedent to his instituting a suit under Order 21, rule 63, Civil Procedure Code. The period of one year allowed for such a suit should also be shortened.

76. No.

77. I would suggest that a provision may be made that all partnership with a capital of Rs. 500 or more should be evidenced by written partnership deeds but such a deed should not be compulsorily registrable.

78. I am of opinion that doctrine of part performance should only apply to original parties to the transaction and should in no case affect transferees for value without notice.

79. No.

80. No.

81. I do not agree to this suggestion. I do not think that a provision of this nature will assist in the realization of the fruits of the decree speedily. The present law provides sufficient safeguard for the purpose.

82. No.

83. It is not necessary to retain the provision. There should be no difference between sale deeds, leases and mortgage bonds.

84. I would suggest that the law in India should be the same as in England.

85. No.

86. No.

87. I do not think so. But I am of opinion that a revision of the Indian Arbitration Act which is full of defects is long overdue. A complete enactment relating to the law of arbitration whether through the court or without its intervention is very urgently required. It is also very necessary that the Presidency Towns Insolvency Act should be extended to Karachi. All commercial bodies including the Chamber of Commerce have for years been pressing on the Government the urgent necessity of such extension. The present Provincial Insolvency Act is utterly unsuitable for a growing city like Karachi.

Mr. KIMATRAI BROJRAJ, Representative of the Karachi Bar Association, called and examined on Tuesday, the 9th September 1924.

Mr. Elphinstone.—Q. In your answer to question No. 5 you suggest that subordinate judges should be appointed on probation for two years before being confirmed in their posts. Do you think that would tend to greater efficiency ?

Mr. Kimatrai Bhojraj.—A. I think two years should be the minimum period if not more. Now absolutely raw people are appointed as subordinate judges. If their work is found to be unsatisfactory they should not be confirmed in their posts after two years.

Q. In answer to question No. 13 you suggest that it would be desirable to invest subordinate judges with jurisdiction to try probate and succession certificate proceedings, but do you think that will be acceptable to the public ? What is your opinion with regard to the second part of the question ? Would you invest selected officers with such powers ?

A. I think all first class subordinate judges should be invested with such powers.

Dr. DeSouza.—Q. Do you really consider that subordinate judges are overworked here ? Well I can only go by figures. I find that last year the first class subordinate judge in Hyderabad disposed of only eight contested suits in the whole of the year. Again I find that the first class subordinate judge in Sukkar did only 33 contested suits in the whole year. Do you think these figures compare favourably with the figures of other provinces ?

A. The cases disposed of by these subordinate judges might have been very complicated and a lot of evidence might have been taken.

Q. I see that the highest number of contested suits disposed of in this province is only 33 ?

A. These returns are not a safe guide. Some cases may have been heard and evidence taken and before the delivery of judgments may have been compromised So far as I know judges keep themselves occupied the whole time. I do not generally go to Sukkar or Hyderabad but from reports I have heard that they are overworked. My impression is that they are overworked.

Mr. Elphinstone.—Q. As regards investing of sub-registrars with jurisdiction to try certain cases, what is your opinion ?

A. They are ordinary revenue clerks and have absolutely no experience of judicial work.

Q. Then with regard to the extension of the small cause court jurisdiction you suggest that ejectment suits and suits regarding partnerships, where the capital does not exceed the pecuinary jurisdiction, may be tried by the small cause court. Would you also include rent suits other than house rent suits. At present you have got only house rent suits.

A. I would not, because some very complicated questions may arise with regard to agricultural lands. There would be risk in these cases. I do not think there are many rent suits in Karachi. It will not materially affect the work of the small cause court.

Chairman.—Q. Would you just explain to me whether suits relating to ordinary agricultural rent go before revenue courts here ?

A. Cases relating to recovery of assessment go before revenue courts, but other suits go before civil courts. If an ordinary agricultural landlord sues for rent that case will go before a civil court. Suits relating to recovery of assessment go before revenue courts.

Dr. DeSouza.—Q. Well cases under section 86 of the Land Revenue Act are tried by revenue authorities ?

A. Yes, when there is a question of assessment then the suits are tried on the revenue side.

Mr. Elphinstone.—Q. Now with regard to the service of witnesses, do you think that service by post would be better ?

A. Yes.

Q. Now with regard to the attendance of witnesses what method would you suggest to facilitate the attendance of the witnesses after the first date of hearing ? I mean after the witnesses have once attended.

A. So far as the judicial commissioner's court is concerned, I can say that about eighteen or twenty cases or fifteen long cases are put up on each judge's board. Now we have three original courts working and we have three dozen suits at least in which evidence has to be recorded. I think it is very very prejudicial to the interests of merchants and litigants to come and loiter about the court for hours.

There is no sitting place for them and now they are kept at least up to 3 o'clock to know whether their cases will be taken up or not. I would therefore suggest first of all that there should be a rearrangement of courts and not more than six cases should be fixed on each board and secondly I would suggest that the judges should go through their lists and see what cases are ripe and what are not ripe and in cases when they find that a case is not likely to be taken, they must let the witnesses go and need not keep them waiting for hours.

Q. Then I think you agree with the suggestion made by Mr. Gopaldas Jhamatmal yesterday that the judges should, when they first come into court, look through their cases and discharge the witnesses in cases which are not likely to be taken up ?

A. Yes. I agree that it should be done in the earlier part of the day and not in the later, as is being done in these days.

Chairman.—Q. If you have three courts, then I think it would be alright. You see they are all doing the same sort of work and you can have a reserve list and it is not necessary for each judge to have an enormous number of cases fixed for each day.

A. Yes, that can be done.

Mr. Elphinstone.—Q. At the present moment even when one judge's work collapses, if another judge has work, a case is transferred to him.

A. Yes, that is so, but the difficulty which we find is that thirty cases are fixed for one day on one judge's board and it is not possible for the pleaders to go through each of them.

Chairman.—Q. Suppose a case is fixed for Monday and is 8th on the list and is not reached. Now will that case be adjourned for another month or will that will be taken on the next day, *i.e.*, Tuesday.

A. No, it is not the case. The rest of the work is adjo urned. It is at the same time left to the discretion of the judge to put that case up for Tuesday but ordinarily it is not done.

Q. Ordinarily what happens ?

A. Cases are discharged.

Q. And a date is taken afterwards ?

A. Yes.

Mr. Elphinstone.—On the following Saturday.

A. Yes.

Q. The date is given by the registrar.

A. Yes. I personally think that the dates should not be given by the registrar but this work should also be done by the judges themselves. I think that the judges should take some interest in this matter so that they may know what cases should be heard early and pleaders can also have a chance to represent this.

Chairman.—Q. Apart from the cases which require special expedition would it not be better to have one cause list and each judge should take a reasonable number so that the cases may come in turn.

A. That is the system in the Bombay High Court ?

Mr. Elphinstone.—Q. Would that be possible in a place like Karachi where you have got one man doing the work both of solicitor and counsel ?

Dr. DeSouza.—Q. Is it not possible to arrange this here in Karachi where there is a system of partnership ? The system does not prevail in any another province but it does prevail here. You are often 3 or 4 men and I don't think the clients have any objection to any one of them appearing.

A. Sometimes it does happen.

Q. Is that not rare ?

A. Yes.

Q. Still it ought to be simpler here ?

A. If we get a notice 3 or 4 days earlier that our cases are coming off before such and such judge, I think it will be alright.

Mr. Elphinstone.—Q. One other point regarding the settling of the board by the judges at the beginning of the day. Under the present system of the dates being taken on Saturday it is impossible to bind the witnesses over. They have to be served all again for the fresh hearing.

A. Yes.

Chairman.—There does not seem to be very much point in binding over the witnesses. If the witness was told that his *subpœna* holds good, then all that you have to do is to give him at the same time the batta and the date. To execute a bond and binding him over is rather a cumbersome formality.

A. A bond may be taken that he may attend every hearing of the case.

Q. What is the good of the bond ? That is his duty under the *subpœna.*

A. As a matter of fact no bonds are taken.

Q. That part of the Code might be amended by being struck out and as long as the man is under a *subpœna* I see no reason for requring him to give a bond again ?

A. The difficulty arises from the fact that the witnesses have now to wait till three or four in the evening and then they are required to come again. They should be told early in the day if they are not required.

Q. Then the judge should go through the list of cases at the earliest possible moment and fix a date for the next hearing ?

A. Yes. And another suggestion is that the parties should be asked to serve their own witnesses.

Q. Let them serve *subpœnas* of their own witnesses ?

A. Yes. We have got sixteen or seventeen cases adjourned from the board every day and the clerk of the court is not able to cope with the work of issuing fresh notices, etc. If it is left to the parties or their pleaders to serve their own *subpœnas* and arrange for the attendance of their own witnesses that would avoid a good deal of delay.

Mr. Elphinstone.—Q. Then you think that powers under section 35A of the Code would be a sufficient check against unnecessary and avoidable oral evidence being let in ?

A. Yes. I think more extended powers should be given to the court in dealing with the conduct of the suit by the parties.

Q. Then you consider that if a higher rate of interest were awarded to the plaintiff, that would make the defendant less anxious to prolong his case. For instance, at present, the court does not allow interest at more than six per cent. though the bazzar rate is eighteen per cent. and that is an inducement to dishonest defendants to delay their cases. If you allow the bazzar rate that would be an inducement to the defendants to hurry up their cases ?

A. Yes.

Chairman.—Q. What is your practice here in damage cases—cases of non-acceptance of goods ? Do you give interim interest ?

A. Yes.

Q. You do not find judges saying that they never award interim interest on the damages ?

A. They award from the date of the suit. In Bombay they award from the date of the decree.

Q. I am very glad to hear that.

Mr. Elphinstone.—Q. In Karachi would it not be perfectly safe and advantageous in the case of the joint Hindu families to sue the manager provided a notice was given ?

A. It will be advantageous everywhere. That will prevent a lot of unnecessary bringing in of parties and serving them.

Q. Then can you suggest any remedy for dealing with the filing of false affidavits to get stay of proceedings and to set aside *ex parte* decrees, etc.?

A. They have got the power to sanction their prosecution.

Q. Do they exercise that ?

A. I do not think there is any other way of dealing with it.

Q. With regard to execution, would you be in favour of Order 21, rule 21, being set aside and execution being allowed both personally and against property straight-away ?

A. In some cases a power should be given to the court to see whether the execution should be allowed against both at one and the same time, but if that provision were removed everybody would rush in to have the man arrested and to have his property attached. The court has power to dispense with the notice for arrest also.

Chairman.—Q. Of course under the Code, as I understand it, the court has power to insist on a notice, but the Code does not say that the notice should be a general thing ?

A. The court can dispense with the notice.

Q. Under the Code the court can, but in special cases it may require notice ?

A. Yes.

A. Nearly all the judges are under the impression that you have got to show special reasons why a notice should be issued. Previously a notice was issued in every case.

Mr. Elphinstone.—Q. With regard to the inspection of courts, you suggest that special district judges should be deputed each year to do the work of inspection of lower courts. What do you think of the suggestion that a subordinate judge should be appointed for that purpose every six months ? Do you think the latter suggestion will be better than the first suggestion ?

A. I do not necessarily stick to that suggestion. Any system may be introduced by which inspection can be done more frequently. At present the Judical Commissioner goes for a month and a half in the whole year and that is not sufficient for that purpose. Instead of having subordinate judges, I would prefer district judges.

Dr. DeSouza.—Q. At present the district judge inspects his subordinate courts at least once every year. Under your circulars every subordinate judge's court should be inspected at least once every two years. Is that not the rule ?

A. If there is any such rule, it is not followed.

Q. Would you be in favour of appointing an extra agency for that purpose other than the district judge of the district ?

A. Yes.

Mr. Justice Stuart.—Q. Do you not think that instead of having an outsider there should be a relieving district judge who should relieve the district judge of his ordinary duties to enable him to do inspection work of the district. Do you not think that will give a better system of inspection ?

A. That will be alright, but it all depends upon the judge who goes out for inspection. Supposing a man is appointed as district judge who has absolutely no idea of judicial work, he may not be able to inspect the lower courts thoroughly.

Q. quite agree with you but I think no one should be appointed district judge unless he has got the necessary experience. If you have a district judge as an administrative officer over five subordinate judges and a complete outsider doing the inspections, I do not think you will have good results.

A. That is alright, but I have told you that the man may not have any experience of the work. If an outsider comes he will do the work more thoroughly because the judges are after all human beings and they may be satisfied with one subordinate judge and may not be satisfied with another subordinate judge. An outsider will do the work more thoroughly and impartially than the district judge

himself. There is another thing also. You may recommend that the district judge must have some training, but the Government may give effect to this recommendation later and to the other earlier. For all these reasons I think an outsider will be better than the district judge of the district.

Dr. DeSouza.—*Q.* In these days of retrenchment, that will be the first appointment which will come under reduction. The post of a relieving judge will be done away with whenever there is a question of retrenchment and there will be this danger with regard to this proposal. But if you have an appointment like the Inspector-General of Civil Courts, that appointment may not be done away with because that will be a permanent appointment ?

(No reply).

Mr. Elphinstone.—*Q.* In Karachi have you got a good many cases where the creditor gets a decree and the debtor disposes of his property ? What remedy would you suggest for this ?

A. These cases are not only in Karachi but everywhere. I have suggested one remedy, but I do not know whether it will work well or not. The judgment-debtor may be examined with regard to his property.

Chairman.—*Q.* You have got it in the Code ?

A. I thought that was only with regard to *garnishee* proceedings.

(The Chairman read out to witness Order 21, rule 41).

The trouble is that this provision is not taken advantage of. That is a dead-letter now-a-days. I think if attachment before judgment is granted more widely or suitable security is taken for costs, the judgment-creditor will be in a far better position.

Q. You can take security for costs from the plaintiff but you cannot take it from the defendant. I mean, if you are going to take security from a man, that is the principle of Order 37 or what we call in English Law Order 14—summary judgment. *Prima facie* he has got no case but he puts in something which is very frivolous.

A. That is under the summary chapter.

Q. Would you like to have the principle of Order 37 extended to cases as it is now done in the Bombay High Court regarding suits for liquidated claims, on contracts or suits like that ?

A. I should prefer that the man should be allowed to defend.

Q. Would you suggest the extension of the principle of Order 37 ?

A. Yes, in a modified form.

Q. What modification would you suggest ?

A. I think he should be allowed to defend, but when the court finds that he is putting in a frivolous defence or is unnecessarily delaying the matter then the court may have power to order security. Of course the plaintiff should show that he has a *prima facie* case before the court exercises that power.

Q. What would the plaintiff show ? Would he show that he has a *prima facie* case and that he is entitled to the money ?

A. Yes.

Q. If he shows that he is entitled to the relief sought for then the court should order the defendant to give security.

A. I don't mean in every case. Suppose there is a rich man and he has got a lot of property, the court need not in that case exercise this power. Anyhow some power should be given to the courts to this effect.

Q. I think that would be a bold experiment. Many cases look quite alright at the beginning, yet they fail at the end. If the plaintiff has a *prima facie* case would that be sufficient ?

A. That should not be the only consideration.

Q. Do you think that the public would like to entrust second class subordinate judges with a power of that sort ?

A. I think this experiment may be tried first of all in places where there is a lot of commercial work.

Q. Would you not get the principles of Order 37 extended to all kinds of suits like liquidated claims, etc., as in Bombay and Calcutta though in Calcutta we have it in different way ?

A. A limited experiment might be tried in large commercial centres.

Q. And extended afterwards ?

A. Yes.

Mr. Elphinstone.—Q. With regard to the rules under section 128 has the Judicial Commissioner's Court framed any rules ?

A. They only picked up some rules from the Bombay High Court.

Q. Do you think that there should be a Rule Committee which should frame rules to expedite matters ?

A. Yes, specially rules with regard to *garnishee* proceedings are very defective.

Chairman.—Q. Can you not get a receiver appointed for this purpose. Under the Code you cannot settle between the *garnishee* and the judgment-creditors.

A. No.

Dr. DeSouza.—Q. I believe practically all the powers by which the High Court make rules can be confirmed upon the Judicial Commissioner with the sanction of the Local Government or Governor-General in Council. I mean all the powers under the Code ?

A. Yes.

Q. I think under section 128 of the Civil Procedure Code, the Court of the Judicial Commissioner has got powers to make rules without special sanction ?

A. Yes.

Q. So that there is really no flaw. So far as the powers are concerned you can frame any rules you like to regulate your own procedure ?

A. Yes.

Q. In some cases you have to obtain the sanction of the Governor-General in Council and in others of the Local Government ?

A. I think for a place like Karachi they should have a Rules Committee of their own.

Mr. Elphinstone.—Q. Do you think that it would be a good thing to examine the judgment-debtor under Order 21, rule 41, before a decree is passed, to know what property he has ?

A. I do not think so.

Q. We were discussing the question of security before judgment. Instead of having security would you be in favour of having a power to examine the man as to his property, so that at a later date when you have got a decree against him he may have some difficulty in asserting he has no money or in doing away with his property ? If he is examined at a previous stage and made to disclose his property, then proceedings under sections 421—23 of the Indian Penal Code would be very much simplified.

A. Supposing he is examined before the decree and he says that he has got property, he can dispose it of even then. If he is examined after the decree, you can ask him as to what property he had at the time of the suit and what property he had disposed of. No purpose will be served by asking any question before the decree is passed.

Q. Sometimes you get cases of this nature. For instance, the decree is passed by the lower court and the judgment-debtor files an appeal. He wants stay of execution and files an affidavit alleging that he has vast property. The appellate

court upholds the decree and at the time of execution you find that he is practically insolvent. You can then move for his prosecution for perjury or under sections 421—23, Indian Penal Code.

A. You can file a counter-affidavit. You can examine him even on that affidavit.

Q. Yes, but in such cases you have got something with which you can tackle the man for perjury ?

A. It will be an instrument for the plaintiff to insist upon the examination of the man, who, instead of disclosing the property, may come to a compromise and thus he might be shut out from contesting the suit.

Q. Will it be of any great hardship to disclose the property ?

A. Yes. I do not think that in any way the lot of the decree holder will be improved.

Q. Cases under sections 421-23, Indian Penal Code are very rare here. The judgment-creditor knows that the judgment-debtor has made away with his property, but he is not in a position to prove anything. Would you not lighten the burden of proof in such cases ?

A. I think that will be giving a very great advantage to the plaintiff.

Q. The plaintiff has to undergo all sorts of troubles but when he takes out execution he finds that the man has gone insolvent and has made away with his property. In such cases do you not think that the court should have power to prosecute as under section 476 of the Criminal Procedure ?

A. The judgment-debtor can say that he disposed of the property for this or that reason, and the judges will have to go through the reasons during the investigation of the case.

Q. It will relieve the plaintiff of the expense and the trouble of prosecution ?

A. I think it will be of a great trouble to the court.

Q. You do not think that it will be a check ?

A. No.

Q. Then as regards arbitration, do you think that arbitrations are unnecessarily delayed ?

A. I am strongly of the opinion that arbitrations are delayed and in the draft of the Arbitration Act a provision should be made that no suits should lie to stay arbitration proceedings.

Q. No suit at all even in the place where the arbitration is held ?

A. All these matters should be investigated under section 14 of the Arbitration Act, and the man should have the right of appeal. I think that will be a sufficient safeguard.

Q. The arbitration should be allowed to proceed to award and there should be no suit ?

A. If there is any objection to the award then they should come under section 14.

Q. Even objections such as not having signed the submission ?

A. Yes.

Chairman.—I endeavoured to do that in Calcutta once, but I was overruled by the Privy Council. I must admit that I was wrong, but I always said that it would be a great blessing to the businessmen if the award could be challenged under the summary procedure only.

A. I have got the draft bill with me here, and as a matter of fact my partner—Mr. Harchandrai—has introduced a clause absolutely barring any suit.

Q. In this court, I understand, there was a practice only lately that when an arbitration award was filed, it called upon the other side to come in and show cause why it should not be filed, and I am told by that they got a tremendous number of objections.

A. They did not accept the draft and they have made rules making confusion worse confounded.

Q. Under what powers did they make those rules ?

A. Under the Indian Arbitration Act. Formerly we had this system. When an arbitrator filed an award under section 11, they used to call upon the man to show cause why the award should not stand filed. What they have done now is this. When you file an award the registrar makes an order " award filed " and then again a notice is issued to the other side why the award should not stand filed. When we have got the order of the registrar that the award has been filed where is the necessity of issuing a notice to both the parties why the award should not stand filed.

Q. Is that done under the present rules ?

A. Yes.

Q. In the other High Courts under the Act the moment the award is filed it becomes executable as a decree and if any body has an objection he may move the court and get a stay of execution. But there is some difference of opinion as to that, *i.e.*, whether it should be done simply on an application under the Arbitration Act or whether we can do it by bringing a suit.

A. The Privy Council has ruled that you can only bring a suit when you challenge the jurisdiction of the arbitrator.

Q. In England you have got an entirely different system because you can apply to the court for leave to execute the award straightaway, but if there is any contest you will not get that leave and then you have to bring in a suit to enforce the award. The intention of the legislature is to put the burden on the other side. The award should become executable as a decree and the man who has an objection should make an application for setting it aside.

A. Yes.

Mr. Elphinstone.—Q. Then on the question of insolvency you recommend that we should have the Presidency Towns Insolvency Act. Are there any particular suggestions that you wish to make in that connection ?

A. Now-a-days we are bound by the Privy Council decision that the man should be adjudicated insolvent whenever he is not able to pay. I have been thinking over this question and I think that in some cases the petition should be refused. The creditor is quite helpless now-a-days. The man furnishes security for Rs. 500 and sometimes gets it forfeited only to harass the creditor in getting him arrested again. If you get him arrested, the creditor is quite helpless.

Q. Well what would you do in a case where the man goes insolvent after having disposed of his property? In such cases where the disposal of the property appears to be very suspicious, would you give the court discretionary power to refuse adjudication if it considered that he has disposed of the property fraudulently ?

A. I would agree to that suggestion. I think that the present provision is very faulty which enacts that within three months of the committal of an act of insolvency you must petition to have the man adjudicated as insolvent. Now-a-days creditors are not vigilant and three months are allowed to elapse, and so they are quite helpless.

Chairman.—Q. You can make him commit an act of insolvency if you arrest him ?

A. But if the man absconds how can you make him commit an act of insolvency.

Q. If he has got any assets you can have them attached and sold ?

A. I wish that a provision to that effect were made here, but supposing there is a fraudulent transfer of the property what can the poor creditor do; he is quite helpless.

Mr. Elphinstone.—Q. I see you suggest that section 69 of the Insolvency Act should be made much wider ?

A. I think the procedure is rather a lengthy one and it should be simplified.

Q. In this court what is the usual dividend which you get ? Is it about two annas ?

A. I don't think it is even two annas.

Q. Is the insolvency work here large ?

A. Yes.

Q. Is the commission charged sufficient in these cases such as would justify the appointment of a fairly high paid official receiver ?

A. I think the income in this respect is so high that you can appoint an official receiver even on a salary of Rs. 2,000. It is absurd for the Government to pay only Rs. 400 to an officer who should deal with lacs of rupees. I would like to say something more about this if I am permitted to say that *in camera*.

Q. One other point in connection with the Reserve List. Do you think you will have no difficulty in this court ? Here you see the number of judges is somewhat small and if a case goes to two or three judges then there would be difficulty to get the appeal in that case heard.

A. I quite agree with that and I think there should be a sufficient number of judges.

Chairman.—Q. In a particular court the making of a convenient cause list is a sort of thing that ought to be left to the judges ?

A. That is my idea.

Q. That is a sort of thing in which this Committee cannot do much but still the arrangements at present want revision.

A. Yes.

Mr. Elphinstone.—Q. Do you think that adjournments given are too frequently in this court ?

A. I don't think there are too many. As a matter of fact pleaders try their best to keep the judges busy and the reason for these adjournments is chiefly that too many cases are fixed for one day and I think this should be avoided.

Q. A pleader knows that his case is likely to come up for hearing and he therefore comes prepared and another man knows that his case will probably not be taken up and therefore he comes without any preparation.

A. That is one thing and if I may be frank I must say that a pleader sometimes has five or six cases fixed for a day and it is impossible for him to go through all those cases and he therefore comes prepared with not all of them and tries to get the others adjourned. This is only due to the fact that too many cases are fixed for one day and if a less number were put up on the board I think that difficulty would be obviated.

Dr. DeSouza.—Q. Are the cases not heard *de die in diem* ?

A. They are not. I have made a complaint in detail in my statement. One more difficulty in this respect is that the judges try to increase the number of their disposals and they therefore take short cases first of all and leave long ones and that is a greater hardship.

Chairman.—Q. Do the judges in this Court show a tremendous disposal ?

A. Pretty good, I think 60 or 70 cases a month, say two cases a day.

Dr. DeSouza.—Q. All contested ?

A. Contested cases are very few.

Chairman.—Q. Uncontested cases are very different and we need only look at the contested cases. It is fair to the learned judges to say that they do not seem to exceed the speed limit ?

A. There are three judges and each one wants to show disposals as much as possible.

Q. A subordinate judge may have the temptation to do that, but the Judicial Commissioner has no temptation. Do you not think that that sort of imputation might be without any foundation ?

A. I shall deal with the question of part-heard cases. If the judge finds that it is a complicated case then he has the temptation of shunting it on and taking up a short case.

Q. I quite agree that the part-heard cases should be disposed of first but still you should not assume that he has got a temptation ?

A. I hope I am wrong.

Mr. Justice Stuart.—*Q.* Is it your suggestion that some judges take up a case and then after an hour adjourn it and then take up another and so on ?

A. Sometimes there may be a suggestion from the parties " We want to settle this or that." It is one reason why the judge says " You have ten days more."

Q. But if there is a case in which the witnesses are present then surely the judge does not stop hearing it ?

A. Sometimes they do.

Q. What is the reason ?

A. They take up another case.

Q. That is not a reason ?

A. That happens. The difficulty is that the ideas of the judge and the pleader do not coincide with regard to the way in which the case is lengthened.

Chairman.—*Q.* You cannot get rid of that ?

A. That is a question of degree.

Q. A good judge and a good pleader will have a different result from a bad judge and a bad pleader ?

A. Yes.

Dr. DeSouza.—*Q.* Here I find that out of a total number of 4,289 contested suits disposed of in this province 1,940 were referred to arbitration. Is it because the parties prefer the decision of the arbitrators to that of the judge? I have never seen so many cases referred to arbitration in any other province of India.

A. Sometimes a suggestion comes from the judge also that the parties should refer their dispute to arbitration and they would try to accept the suggestion from the court.

Q. That is the explanation ?

A. Yes, and at the same time they try to avoid appeals.

Q. They are quite ready to go to arbitration because they get a better decision ?

A. I think that in many cases the decision is more equitable than the decision of the court.

Karachi Chamber of Commerce.

Letter from the Secretary, Karachi Chamber of Commerce, No. 80-M.L.-38, dated the 23rd July 1924.

I have the honour to say that the Government of Bombay have sent this Chamber a copy of your Questionnaire with instructions to reply direct to you.

1. Your very first question raises our chief problem. The court of the Judicial Commissioner in Sind is to all intents and purposes essentially a district court in its procedure on the Original Side and in its equipment. My committee have been pressing for years for its reconstitution as a High or at least a Chief Court.

My committee desire to put before you a copy of their letter No. 80-M.L. 12 of 24th January 1923 (not printed) to the Commissioner in Sind. This letter exposes in detail the arrears of justice then existing. Since then one additional judge has been appointed.

Towards the end of 1923 my committee were favoured with a draft bill to constitute a Chief Court for Sind.

My committee desire to lay before you their letter No. 80-M.L.-29 of 16th January 1924 on the said draft, as it covers various points on which your committee might be able to assist us.

Replies to Questionnaire.

With these preliminary remarks my committee desire to say that an original commercial suit ought ordinarily to be decided within at most six months of filing.

2. Please see the schedule of arrears tabulated with the Chamber's letter No. 80-M.L.-12 of 24th January 1923.

3. The reconstitution of the court of the Judicial Commissioner in Sind into a High Court or at least into a Chief Court at the earliest moment possible.

6. Yes, and especially by temporary transfers of judges from Karachi to the Bombay High Court.

85. The courts have often, having settled the points of law at issue, referred cases as *matters of account* to arbitrators. But at present this can only be done with the consent of both parties. In the absence of " Masters " my committee would give the courts powers to refer such cases of their own motion to arbitrators for accounts.

87. Codification nearly always involves new litigation to test whether the Code has in any respect modified the law as previously accepted. My committee do not recommend further codification of any branch of law at present.

From the Chamber to the Judicial Commissioner of Sind, No. 80-M.L.-29, dated the 16th January 1924.

On behalf of the committee of the Karachi Chamber of Commerce, I have the honour to acknowledge your letter No. A-1910 of 13th December last, referring to this Chamber the draft Act for a Chief Court in Sind for opinion.

My committee desire to lay the following points before you :—

First, generally speaking, my committee find some points distinctly not covered by this draft, points which are essential for the speedier execution of justice in Sind :—

(*a*) There is no provision for an extra judge making 5 in all. Raising the status and dignity of the court will avail little if the personnel is not increased.

(*b*) Nor can my committee find any specific enactment for increasing the staff. Besides a registrar and a deputy registrar, a qualified clerk of the court for every judge is required. It is possible that the provision of such extra staff, the need of which my committee suppose is established beyond cavil, will lie within the province and authority of the Chief Judge under section 17, but my committee certainly desire some assurance on that point.

(*c*) There is no provision for making contempt of court committed outside the court cognisable by the court. Surely the need of this is admittedly established.

(*d*) There is no provision for an official receiver nor for the application of the " Presidency Towns Insolvency Act " to Sind in the new regime. My committee regard these as essentials. In fact my committee would go further and say that if the present opportunity is not seized to bring our insolvency laws up-to-date the new Act will in some measure fail in its purpose of removing the defects of our present system, and will only serve to whitewash and perpetuate existing scandals.

(*e*) Then as to matters of procedure. My committee desire to know if the chief court, under the Act as now drafted, will have inherently the power to frame rules for summary procedure, such as Order XIV in the English courts, and adopt the English system of " Originating Summons " generally. My committee are strongly of opinion that a far broader use of summary procedure is required if the Chief Court is to be effective and avoid arrears such as exist at present. If the new Act

fails to give the judges power to frame such rules, it will fail wholly to enable them to meet the situation.

(*f*) There seems to be no provision for completing the new court's jurisdiction in matrimonial causes. If parties still have to go to Bombay to get a decree *nisi* made absolute, my committee consider it will be derogatory to the dignity of the Chief Court, besides perpetuating hardships on innocent parties.

(*g*) It is a comparatively minor matter, but there seems no reason now why Karachi should not be put on the same footing as presidency towns in respect of section 184, Criminal Procedure Code.

Coming to the draft Act section by section, my committee desire to say :—

Section 3. (1) There should be at least 5 or more judges, and not " 4 or more."

(2) Of the 5 judges, 3 should be barristers or pleaders of not less than five years' standing *and practice*.

There are obvious objections to accepting *standing* as the passage of years after call without actual 5 years' active practice at the bar.

My committee suggest a new clause should be added here forbidding any of the 5 judges to be appointed *acting* or *temporary* judges in any other court. My committee know of no other means of preventing the work of the Sind court being thrown out of gear by the Bombay High Court continually borrowing our judges to suit their own convenience regardless of the interests of justice in Sind.

Sections 8 and 9. My committee consider the Chief Court should have power (like the Lahore High Court, Sections 9 and 17 of Charter) to remove to itself for trial any suit triable by any court subordinate to itself, and over all persons triable by or within the jurisdiction of any court subordinate to it.

Section 11. (1) It is not clear to my committee that the *Full bench* will have power to revise the decision of its own Appellate court. My committee consider this most desirable to save appeals to the Privy Council.

Section 13. In line 2 presumably " Section 10 " is a typographical error for Section 12. My committee fail to see that the public prosecutor is a proper official for such duties, as he appears to be subject to the directions of the district magistrate or at least of the Commissioner in Sind. Greater independence is required of a judicial officer entrusted with such duties.

In the opinion of my committee under this Act a " Government advocate " ought to be appointed and there would be no objection to entrusting these duties to such an officer. Failing that my committee consider the granting of such certificate should be reserved for the Advocate-General, Bombay. In this connection my committee desire to raise the point of the rights of district magistrates to report confidentially to the court in criminal appeal cases.

District magistrates are apt to accept the views of the police, and so ultimately to lend their authority to the representations of subordinates whose probity is not beyond question. My committee recall one such case about 15 years back when, as the result of the district magistrate's interference in a criminal appeal, a rich receiver got off more easily than the poor fellows he had employed to physically execute the thefts for him. My committee are of opinion that with the Chief Court there should be a Government Advocate, and that the rights of district magistrates to interfere in criminal appeals, except *publicly* through the Government Advocate, should disappear.

Section 17. Possibly this section provides for the appointment of sufficient staff (b *supra*) but it does not provide for an official receiver (d *supra*) nor for a " Clerk of the Crown " whose appointment appears to be necessary under the revised Criminal Procedure Code.

Section 43. (2) " In Sind " appears to be omitted by inadvertence.

Section 46. This section does not appear to endow the Chief Court very clearly with all the existing powers of the present judicial commissioner's court, *e.g.*, Admiralty, Testamentary and Extradition business.

My committee trust that all these points will receive due consideration.

Memorandum on Arbitration by Mr. E. L. PRICE, C.I.E., O.B.E., Representative, Karachi Chamber of Commerce.

When the Civil Procedure Code was revised in 1908, there was a special mention of the need of amending the Indian Arbitration Act.

Sir Lawrence Jenkins's note ran :—

> " We have determined therefore to leave arbitration clauses much as they are in the present code, but we have placed them in a separate schedule in the hope that at no distant date they may be transferred into a comprehensive Arbitration Act."

Chief Justice Sir Norman McLeod in 1920 (Manilal Motilal *vs.* Gokaldas Rowjee) remarked—

> " The provisions of the Code of 1882 relating to arbitration were transferred with certain modifications to a separate schedule in the hope that at no distant date they might be transferred into a comprehensive Arbitration Act. Unfortunately that hope has not yet been realised with the result that the law relating to arbitration still remains in a most undesirable condition."

2. The Indian Arbitration Act, 1889, applies to Karachi, and by various legal rulings may cover commercial contracts made elsewhere provided an essential part of the fulfilment of the contract has to be performed in Karachi.

Under a business contract made between a resident of Karachi and a resident, say, of the Punjab, and containing the usual arbitration clause, a dispute having arisen, the Karachi party claims arbitration.

The Punjabi, however, protracts the proceedings by filing a suit in a Punjab court, and as a result of the delay he thus causes, he can frequently compel his unfortunate Karachi creditor to settle with him for less than the true amount due. This conflict of jurisdiction between Sind and the Punjab is constantly used to delay and so to pervert justice in arbitrations. The Punjab courts, knowing practically nothing of commercial arbitrations, lend themselves to such obstruction.

3. The conflict of jurisdictions is further complicated by different and opposing decisions made by different High and other courts in India. There is no means of reconciling these differences save by appeals to the Privy Council.

The idea of referring commercial arbitration matters to the Privy Council hardly fits in with the idea of pie-pouderer !

4. The Indian Arbitration Act 1889 is really only the *third* part of the original English Act from which it was adopted.

But Arbitrations in India are also possible under the Civil Procedure Code, more nearly in accordance with the whole English Act.

The courts have different rules in connection with filing awards according as to whether the reference was under the Indian Arbitration Act or the Civil Procedure Code. This leads to more complications and doubts, most costly to the parties.

5. These differences are the more confusing in the matter of appeals outside the jurisdiction of High Courts.

6. Were the Indian Arbitration Law consolidated in a new Act for the substantial law, and the adjective law clarified by the necessary revision of the Civil Procedure Code, all concerned might know where they stood, and a great saving of time and costs would be effected.

7. In the " all concerned " I would even include judges, for in my own personal experience as an arbitrator I have known an A. J. C., fresh from a district court

and without experience either of commercial or arbitration cases, who insisted on bearing the case all over again for himself, and only filed my award when he was satisfied I had decided justly and as he would have done himself.

I have also more than once been put on oath and questioned by judges as to my actions as arbitrator in such a way as to show, I consider, that the judge very imperfectly understood the functions of an arbitrator, or his rights when no misconduct of any sort was alleged against him.

8. It has often been remarked that Indians alone appear to contest the filing of awards. This is because it is not etiquette for a European firm to dispute the arbitrator's award. In 19 years in Karachi I have only once known a European firm attempt to dispute an award against it. But Indians very often appear to contest the filing of awards against them, in hope of gaining at least *time* and so inducing their creditor to settle for less than his rights. In one such case to my own knowledge a clever pleader spun out the court proceedings from 1921 to 1923; by the time the unfortunate creditor had got his award filed, the debtor was insolvent, so that the creditor had only an unsecured claim in bankruptcy.

9. The essence of commercial arbitrations is pie-pouderer law, and the old time expedition is still possible between honest disputants. In a dispute under a charter-party I once sat from 2 to 4 and gave my written award at 4-30 so as to enable the steamer to sail that night with the dispute settled and adjusted.

Almost any sort of Arbitration Law would cover the needs of such disputants whose only need is a prompt and reasonable settlement of their differences.

But too often the idea of one party is only "to win, tie or wrangle." The present state of the Arbitration Law offers far too many opportunities to that sort of *party*, and *pro tanto* diminishes the chances of the realisation of his just rights by the other *party*.

10. In conclusion I may point out that besides the *dicta* of Sir Lawrence Jenkins, C. J. and Sir Norman McLeod, C.J. above quoted, Mr. Rupchand Vilaram, A. J. C., who is, I understand, to appear later before you, is an expert in Arbitration Law and also a strong advocate of reform;-that the Associated Chambers of Commerce of India and Ceylon at Bombay on 3rd December 1923 passed the following resolution unanimously:—

> "That in the opinion of this Association the Government of India should take steps at the earliest possible date to examine the law of arbitration in order to remedy such defects as have been pointed out by the several High Courts and circulate for public opinion any suggestions for the improvements of the law that Government after enquiry may consider desirable."

and finally that, impressed by the needs of the times, Mr. Harchandrai Vishindas, C.I.E., M.L.A., a prominent member of the Karachi Bar, is interesting himself in the matter in the Indian Legislative Assembly.

Mr. E. L. PRICE, C.I.E., O.B.E., Representative of the Karachi Chamber of Commerce, called and examined on Tuesday, the 9th September 1924.

Chairman.—You represent the Karachi Chamber of Commerce?

Mr. Price.—Yes.

Q. And from the papers that you have been good enough to put before us, I think there are two points, in particular, about which I would like to have your further opinion. One is the question of the status of the courts.

A. The Karachi Chamber of Commerce is very keen, indeed, to get the status of the court raised. Last time when the Governor of Bombay—Sir George Lloyd—was here, he said that he did not know why. We know why perfectly well. At present we have an insufficiency of judges and not only that but we have also too many judges who are really birds of passage. A man comes here from a district court and he is sometimes keen to go back to the district court or he may be a man who is temporarily transferred to the High Court. We have practically only two permanent judges but the others are birds of the passage. If the Court here is made a Chief Court then certainly we will have something like permanent judges. No judge who is once appointed to the Chief Court here would be attracted away.

Q. I understand that the two main reasons why your chamber would like to have a Chief Court are (1) you get more summary procedure and (2) you will get judges who can stay on. These are the two main points.

A. I think it goes further than that. The Government of Bombay has actually drafted a bill and we have given our comments thereon. I think they accepted our proposal and this bill is actually now to be put before the Legislature.

Q. I understand this to be so but what I want to know is, in order to satisfy myself, whether you get what you want. Let us take the things one by one. The first thing is as regards the summary procedure. You can get it in the Judicial Commissioner's Court just as well as you will get in the Chief Court ?

A. At the present time we have not got a Rules Committee. I think it can be established with the sanction of the Local Government. Somehow the court does not care to submit these suggestions to the Local Government. At the present time even, there are certain conditions in which summary procedure can be exercised, but so far as I know they never take any advantage of them. You take action on a dishonoured bill—hundi. That action has to be brought within six months of the date of the bill. The court says that the cause of action arises from the date of the hundi and not from the date of the dishonour.

Q. That is a question of limitation. We have got that in mind. It is not a fault of the court and as regards the failure to have a proper system of summary judgment or originating summons the chief court would not be any better than the present court. The present court has just as much powers as it would have if it were a Chief Court.

A. I think that there should be a better subordinate officer, a man more capable of exercising the powers of a master or of a sub-registrar.

Q. That will be done by the judges in their chambers. I do not suppose that a master or a registrar can give summary procedure. The master in England is a very highly paid officer. Now as regards the judges, supposing you have a Chief Court here, you think that they would not like to go to the High Court of Bombay ?

A. Yes.

Q. Unless you get a very special term of salary fixed for the judges of the Chief Court, I do not think that the man would necessarily remain there. The pay of a Chief Court judge is only Rs. 3,500 and it is the pension which makes the difference.

A. We demanded a High Court and the Government of Bombay has made a counter-offer of a Chief Court.

Q. The actual amount of work in the Sind province does not seem to justify a Chief Court. It is very small. But nobody can object to a place like Karachi being given as good a judiciary as it pays for. You would not get different men whether it is a Chief Court or not. The same men will come in.

A. There is no objection to a senior district judge coming in but what we want is that he should really settle down here. A man coming to Karachi is at a tremendous disadvantage.

Q. Yes, he has no commercial experience. I gather that Karachi work is special even for people who know certain amount of commercial work.

A. Yes. Commercial cases are finally connected with port and shipping.

Q. You think that the staff of the court requires very much strengthening ?

A. It does.

Q. Where does it pinch particularly ?

A. I cannot say. That is going into the technical side.

Mr. Justice Stuart.—*Q.* What do you consider is a reasonable time to get a copy ? If you get a copy in four days, will you be satisfied ?

A. It is impossible to get a copy in four days.

Q. In some parts of India you can get copies in four days. If that can be done in other places, is there any reason why that should not be done here ?

A. If we had better staff.

Q. You think that we will get a better class of men if the status of the courts is raised ?

A. At present nothing can be done without the sanction of the Local Government. If the Local Government just takes a little care I think great improvement can be effected.

Chairman.—If the local Legislative Council chose to stop the salary of the whole of the office they could do so. In order to get extra people you have got to persuade the Government and the Government in its turn has got to persuade the country.

A. One competent man is far better than two duffers. At present we have got the worst method of recruitment. Humble clerks who begin their life with Rs. 40 or Rs. 30 after thirty years' service put in their claims and they consider their claims to be just, and they have to be provided with senior jobs whether they have got any ability for such work or not. Instead of this arrangement why not have better class of men to begin with ?

Dr. DeSouza.—*Q.* What class of officials are you referring to ?

A. I hardly know their title, but I think that they, at any rate majority of them, do not prove to be competent men.

Q. That is a question of selection by the Judicial Commissioner ?

A. I do not believe you are ever going to recruit better men from such beginnings.

Q. If men who are at the bottom are not recruited for senior appointments, do you think that will serve some purpose that there should be two classes, *i.e.* subordinate class and higher class ?

A. Yes, and promotion from the lower to the higher only on merit. But I do not know much of these things. My main point is that if the status of courts is raised you should get a better class of men and there will not be so much delay in future.

Q. So your point is that the personnel should be of a very high standard ?

A. Yes.

Q. Do you think you are getting better type of men as judges from the Bar ?

A. Yes. We have got two judges from the local Bar and they are doing their work excellently.

Chairman.—You say if the status of the court was raised, it would be possible to get better type of men ; do you think you will be able to get good men from the Bar ? Do you think the present salary would be a sufficient attraction for them ?

A. At the present time a successful lawyer would have to make a financial sacrifice to accept a judgeship. He will probably be loath to do it till at a certain stage of life.

Q. The next thing is with regard to the Arbitration Law and it is very important. I have read your memorandum. Do you think at the present time when an award is filed it becomes executable as a decree. At one time, I understand, there was a

system by which, when the award was filed, the people were invited to make objections. I understand there has been a change in practice here. That is not the case now ?

A. I do not think there has been any real change and, if there has been any, it did not amount to much. It has been merely a change of form.

Q. At present, I understand, when an award is filed, it becomes executable as a decree, and if any body objects to it he must give security ?

A. I do not think that is done.

Q. The man can bring in a suit in another court to set aside the award ?

A. The courts have different rules in connection with filing awards according as to whether the reference was under the Indian Arbitration Act or the Civil Procedure Code. The other courts will refuse to entertain it. Under a business contract made between a resident of Karachi and a resident of another province, say, of Punjab, if there is a dispute, the man who is resident of Karachi claims arbitration. The resident of the Punjab tries to prolong the matter by filing a suit there and consequently the resident of Karachi is forced to settle the matter as the resident of the Punjab desires. This delay is caused only because the Punjab courts know nothing of commercial arbitrations. He goes and files a suit in the Punjab because the Sind courts will not entertain it.

Q. Is there any special law with regard to Sind ?

A. The Sind courts will not grant injunctions against arbitration and they will also not stay arbitration proceedings. The Punjab courts entertain such suits and grant temporary injunctions. The Punjab courts think that by refusing to entertain such suits, they will be depriving the man of his right to a hearing.

Q. Have you any particular suggestion to make for the amendment of the Arbitration Law ?

A. I just mentioned that there are two Arbitration Laws in India. One is the Indian Arbitration Act and the other is a schedule in the Civil Procedure Code and they are treated as different rules.

Q. I don't think that the existence of two different systems worries much ?

A. No. I think there is a good deal of confusion as regards this.

Q. Apart from the places like presidency towns—including of course places like Karachi, Hyderabad, etc.,—can you apply the Indian Arbitration Law in the mofussil ?

A. I am very doubtful about this. The Associated Chambers passed a resolution :—

" That in the opinion of this Association the Government of India should take steps at the earliest possible date to examine the Law of Arbitration in order to remedy such defects as have been pointed out by the several High Courts." This was a modification of the Karachi Chamber's original wider resolution.

I don't know what are the exact views of my chamber as to the mofussil. I think that the Act should be consolidated rather than broadened thus. You see arbitration is only suitable to those persons who have a good deal of knowledge and who are able to defend their own interests. I think that to apply this in the mofussil would be too much.

Q. Would you allow this in the case of a money lender of an Indian village ?

A. No. I don't think it is advisable. Arbitration Law is only for commercial interests. As a matter of fact it began with the Europeans. I think Indians have generally adopted it because the thing is so convenient in Sind. You have to be sure of reliable arbitrators being available.

Q. Do you know of the recent changes made by the Privy Council in this connection ?

A. I don't know what they are.

Q. One of these is that the court should not interfere with the award of an arbitrator unless there is an error or because sufficient reasons are not given in support of the award.

A. I cannot as an arbitrator be expected to give reasons, etc., as in this way I would have to be a court of record and nothing else. I have had some personal experience as an arbitrator. I know of a judge who without having any experience of commercial or arbitration cases insisted on hearing the case all over again and he only filed my award when he was satisfied that I had justly decided. Some times judges examine the arbitrator at great length. The next thing is that Indians very often appear to contest the awards in the hope of gaining at least time and inducing their creditor to settle for less than his rights.

Q. As a result of your discussion before your Association do you think that the things should be made more workable in places like Karachi by consolidating the Law ?

A. Yes.

Q. That is to say you have no powers like what you have in England ?

A. You have the reference of course. To have given against you an injunction is to stop your exercising the right.

Q. In Karachi you do not have English mortgages.

A. Very often. Then we have got the Land Registration Act. Every mortgage must be registered in the Government register, and yet the legal owner is kept back from exercising his rights.

Q. By the granting of injunctions *ex parte* ?

A. For anything. A man comes in and says " It is true that I signed all these deeds but they told me privately that if I did not pay within three years I will be given six months extra." It is not in the document.

Q. Does this question of *ex parte* injunctions touch upon any other matters besides the mortgages ?

A. I am not sure. Too many postponements are granted. I had an arbitration suit filed some years ago. I was there an agent and my principal had to collect about fourteen thousand rupees. I was in court seven times in thirteen days and I got over it in thirteen days only because I had a violent row in the verandah with my lawyer when he agreed to an adjournment. A pleader turns up and puts in an affidavit and sometimes reflects on my personal probity. But I cannot go into the witness box and deny all that, and then he comes on with a medical certificate. So it went on and I was bombarded with offers to settle for a half or two-thirds. But I refused to settle thus. On the 13th day the money was paid into the court but it took me about three weeks to get it out.

Mr. Elphinstone.—Q. Is the interest allowed here adequate ?

A. As I understand it, the court here thinks that six per cent. is the maximum that they ought to pay, though of course the money is worth anything up to 12, 15 or 18 per cent.

Chairman.—In Bombay we put it to the Chamber there whether the rate of interest of six per cent. should be raised generally. They were inclined to think that in Bombay they could get only six per cent. and they did not want to have it raised.

A. In Bombay the money market is not as tight as it is in Karachi.

Q. I want to know whether you can allow *interim* interest—from the date of the suit to the date of the decree—at a higher rate, say, 12 or 15 per cent., or whether you should fix a medium rate ? I should think that eight per cent. is the highest figure

A. It is a very difficult question, but it would not be such a burning question if there were more expedition.

Q. Yes. If you have a case disposed of within six months you would not mind it, but it goes on for two or three years ?

A. Yes.

Dr. DeSouza.—*Q.* Has your Chamber any litigation before the small causes court ?

A. Once I acted as a referee by consent of the parties. There was a suit for the original sum and a counter action brought for a larger sum. Both the parties finally submitted it to arbitration.

Q. What do you think about the extension of the jurisdiction of the small cause court in money suits up to three thousand rupees ?

A. I do not approve of it. At present there is no appeal against the decision of the small cause court and these matters are big enough.

Chairman.—Now, supposing you get an appeal above two thousand rupees and leave the present small cause court as it is except that above two thousand rupees all cases will be tried, not by summary procedure, but in the ordinary way.

Mr. Price.—A suit for two thousand rupees may really involve some principle which may be of interest to the whole of the community and require a ruling forming a basis for other transactions. People would not like such cases being tried by a second class court.

Mr. Justice Stuart.—Under the present Act it is open to the judge to state a case at once. Curiously enough nobody seems to do it. I think nobody ever asks them to do it.

A. It is not done.

Chairman.—*Q.* Why are you against the extension of the jurisdiction of the small cause court ?

A. The function of the small cause court is to give ready and speedy justice in case of petty debts and it is fulfilling that function in a very creditable way. There has been no complaint against it and why not let the little locomotive work, instead of overloading it. By overloading it you will spoil the machinery, and it would be very unfair to petty tradesmen.

Mr. Justice Stuart.—The question is one of remedy. What remedy do you propose for the speedier disposal of suits which are very petty in their nature ?

A. Petty legally or socially ? There is another great thing and that is that you should take a social view and not merely a legal view of these duties. A merchant is a most useful part of the social fabric. He takes surplus produce from where it is produced, and lays it down where it is required for consumption. Owing to him the farmer need not hang himself in expectation of plenty and the consumers have to thank him too for such service. Of course I am talking of the true merchant business ; I am not talking of speculation which is a regular nuisance. It is all due to the activities of the merchants that producers and consumers come together and the social fabric holds. For this reason the Bench and Bar alike should strive against delays containing undoubted social injury. It should be somebody's duty to see that the machine works. If there is any delay owing to the dishonest or lethargic habits of subordinates, there should be somebody to call for an explanation and see that the work in future goes on smoothly, this probably means a change of attitude in all concerned. In fact a change of heart.

Q. I quite agree with you, but if they cannot cope with the work they must have assistance ?

A. Yes, they want help in some way.

Dr. DeSouza.—There is one little point. I quite understand your objection to the extension of the small cause court jurisdiction. You mean to say that if more work is given the machine would not work at all and there will be loss in speedy justice. If you look at the figures of suits instituted in the Judicial Commissioner's court, you will find many suits which are of very petty nature. Do you think your chamber will be opposed to the suggestion of creating a separate court, an

inferior court to that of the judicial commissioner's court, on the analogy of the city civil court for disposal of suits, say, worth Rs. 2,500 and under ? That experiment has been made in Madras where there was great congestion some years ago. There was great complaint about the delays caused in the disposal of suits and the High Court and the Government joined their heads together and decided to establish a court of this nature.

A. Speaking off-hand—I am not instructed by my Chamber to give this reply—I think the chamber would not agree to this suggestion. The Chamber would not be in favour of multiplying the number of courts.

Q. The idea is that if you have a city civil court to hear suits of petty nature, one advantage will be that you will have a permanent judge to do that work. He would be selected from the Bar and he would master the commercial law and its technicalities necessary for the disposal of that class of suits.

A. I think it will add to the difficulties existing already. I do not advocate that courts should be multiplied. Perhaps you are thinking of something like the court of the City of London which is really a small cause court with enlarged jurisdiction. I do not think the Chamber would favour the suggestion.

Mr. Elphinstone.—Q. What are the views of your Chamber about insolvency matters ?

A. The Chamber would like to have the Presidency Towns Insolvency Act. We have not got a suitable official receiver.

Chairman.—I understand the official receiver is a man who is paid by the Government. He gets Rs. 400 or Rs. 500 a month.

A. But he has got no judicial powers.

Q. An official receiver or an assignee has no judicial powers. His business is only to collect assets.

A. You see the Presidency Insolvency Act does not apply to Karachi and we have much difficulty in dealing with the debtors in the mofussil.

Q. You have Provincial Insolvency Act here and I think you ought to have Presidency Towns Insolvency Act.

A. Yes.

Q. As regards the official receiver you have not got a man who is the paid servant of the Government and who collects any money, etc.

A. He has not got any power. I think he cannot even cross-examine the debtor.

Q. No, he can.

A. I don't know then.

Q. Have you ever been a member of the committee of inspection in insolvency ?

A. No.

Q. You see in commercial towns they have small committees of creditors and they manage their own property themselves as the property of debtors is their property.

A. There has been, I think, such a committee in which the assets, I remember, were wholly merchandise, the marketing of which required special skill.

Written statement of Mr. BHOJSINGH G. PAHLAJANI, M. L.C., Pleader, Sukkur.

1. A. Suits, *i.e.*, District and sub-courts—	Title, money, 6 months and 3 months.
B. Claims, *i.e.*, District and sub-courts—	3 months.
Appeal not more than—	6 months.

2. It does often exceed reasonable limits, specially in suits for property. Even money suits, which are chamber matters in the High courts, but which are transferred to long causes list if highly contested, take unjustifiably long time.

Main causes for the delay.

(1) Personnel and selection of the trying judges in subordinate courts chiefly.

(2) The delay involved in the service of processes.

(3) The unequal areas of jurisdiction of various courts.

(4) Length of prescribed procedure in civil suits, which delays proceedings in account suits, specially where books and documents are concerned.

(5) Length of prescribed procedure in execution proceedings and tardy relief in execution; introduction of the principle of non-attachment of immovable property in some instances.

(6) Length of insolvency proceedings.

In appeals—

The only obstruction is the amount of criminal sessions work in a court.

3. Remedies suggested.

For (1) (*a*) Elimination of racial distinction.

(*b*) A real civil practice of 5 years, not a nominal appearance in cases without having conducted any serious civil work.

(*c*) More elasticity as regards age at selection; insistence on 30 years' age is unnecessary and leads to unnecessary complication.

(*d*) Reliance on the opinions of district judges before whom applicants have actually practised, who must first actually send for cases conducted by candidates, inspect them and then report, and confinement of selection to district court Bar, so far as possible.

For (2) The present system of bailiffs serving summons, and waiting for the plaintiff to accompany them is defective. Even revenue processes by talati's kotars are served faster and more regularly. Corruption amongst them is another reason. They should be compelled to keep conveyances. Reference to the headman of the village and his assistance should be resorted to (as in the case of processes in criminal cases).

(3) The whole of the province requires readjustment as regards territorial jurisdiction in consideration of nature of work and comparative simplicity of suits.

(4) Simple suits on balances signed, on mortgage or simple deeds, on Hundis, on rent notes, ejectment suits on rent notes or registered sale deeds are too simple to ordinarily require lengthy procedure: It should be made compulsory for parties to be present at the first hearing for examination (except in exceptional cases). Insistence on deposit and payment in court of admitted amounts should be resorted to.

In account suits, partnership, partition, trust suits, the procedure for production of books, is too unwieldy and ineffectual, resulting in length and failure of justice.

In case of easements and land suits where local inspection is necessary, power should be given to take evidence on the spot.

Courts should pay immediate attention to the applications for production of documents.

(5) & (6) Requires little comment; frequent notices to defendants, want of power of immediate execution even in money decrees, the time wasted in issuing proclamations, re-proclamations, if auction not finished.

Tardiness of revenue authorities in execution decrees—can all be remedied by change in procedure—In the case of district courts, whose time is

wasted on suits simply because Secretary of State or a Railway or a manager of Encumbered Estates or a public servant is a party can be easily saved by amending section 32 of the Bombay Civil Courts Act, XIV of 1869.

For the civil appellate work, giving appellate power to selected subordinate judges should be more freely resorted to: Appointment of an additional joint judge to do civil appellate work at different centres should answer the purpose.

In the district of Karachi, for non-commercial suits of any kind, a first class subordinate judge would be able to cope with the city and district work, even a second class judge can try all suits within Rs. 5,000 satisfactorily. This was once tried with success.

4. Yes. Recruitment from the Bar should be more encouraged. Experienced members of the Bar on high salary should be appointed district judges, no age-limit for district judges, 35 for subordinate judges may be prescribed.

See further answer to Question 3.

6. No.

7. Not possible: Determining the standard efficiency as regards *amount* of work done will undermine the efficiency of the work itself: cry for despatch in the province has undermined efficiency of the work.

In land suits, partnership suits, partition suits and many other complicated suits, the number of pages of evidence recorded signify nothing. Careful selection of judges is the only safe guide for disposal of work.

8. No.

9. Yes.

10-11. Don't apply to this province.

12-13. Guardianship matters, succession certificate matters can be transferred to sub-judges—not probate matters—land acquisition matters below Rs. 2,000 can be done by a subordinate judge without producing dissatisfaction (with an appeal to the district judge). All subordinate judges can do it if well selected.

14. No.

15. Jurisdiction over simple mortgage suits can be given.

16. Not except with respect to suits under section 128 (2) (*f*) (*ii*).

17. No.

18. No. I am not in favour of curtailment of right of appeal. Existence of that right makes judges more careful.

20. I am not in favour of abrogating the right of second appeal, considerable number of authoritative rulings are laid down in small suits.

21. No. Security serves the purpose.

22. Yes.

23. No. I am afraid many real points of law requiring elucidation are avoided to be decided by the High Court in small cause court suits revision.

24. In case of original suits.

(*a*) In simple long cause suits, parties should be asked to be present to give statements as to documents, copies of documents in such cases should accompany plaint.

(*b*) Parties should be required to bring with them all books and documents and receipts on such suits at the first hearing. Judges should be strict in the observance of this.

(*c*) Free use should be made of procedure in Chapter XII and the judges should see to its observance: free use should be made of interrogatories chapter; these provisions are usually neglected.

25. In case of defendants knowing reading and writing, service by registered post can be resorted to: to give power to parties to serve notices as laid down in section 106 of the Transfer of Property Act in suits is dangerous; defendants

will suffer seriously. Careful judges having sufficient control over their process service establishment have little reason for complaint.

The assistance of the village headman should be taken.

27. No.

28. Yes. In the case of literate people, village officials can be very useful. Process should be served in the presence of the Mukhi or the Headman or a literate person and his signature taken.

29. This is impracticable in villages.

30. It is being done in towns: it is impracticable in villages at a distance from the court.

31 & 32. Provisions of chapter of discovery, admission and of examination of parties is usually neglected: For framing issues, examination of parties is very necessary.

Very few judges examine parties at the framing of issues, most of them do not: The failure is due to the want of sufficient grasping power in the judges themselves and failure to read the plaint, written statement and the documents. Most of them leave to pleaders the work of framing issues. The examination of parties as witnesses by the court before other witnesses are examined should be resorted to—opposite parties should be allowed to be examined. The Privy Council ruling that one party should not put the opposite party in the box has tended to increase the length of proceedings.

Examination of parties should be resorted to frequently.

I am against calling of witnesses being postponed until after examination of parties.

34. No. Order 16, Rule 16 (2) is never put into action.

The witnesses should be bound down under rule 16(2) and if they are absent their attendance secured under compulsion as in criminal cases. No costs for securing compulsory attendance should be paid by the parties: their failure and delay due to the option given to parties to file or not file costs for compulsory process.

Better control of bailiffs by the judge secures attendance.

35. First part—No.

2nd part: frequent use of the power given to the judges to make parties specially liable for costs of witnesses who prove nothing.

3rd part—Undesirable—therefore nothing suggested.

36. I am in favour of proof by affidavits in—

succession certificate proceedings and in *ex parte* simple suits on bonds, stamped acknowledgments, of people who can write.

Not in claims or obstruction proceedings.

37. The suggestion of giving the power to court, will play havoc with dispensation of justice: we have reason to complain even at present of some judge's tendency to stop necessary examination.

38. To all registered bonds against non-agriculturists.

Application of Order XXXVII to all courts with effect to negotiable instrument.

41. Yes. The guardian in order to harass plaintiff deliberately refuses to accept guardianship. The nearest guardian should be compelled to take up the defence. He should not be allowed to refuse.

The indiscriminate award of fees from the plaintiff to the nazir, which is a source of patronage in some cases, should be stopped. If the guardian does not consent to represent, courts should proceed *ex parte*.

42. Not necessary to check them. Judges should be careful; some judges are careful; some use it as a handle for patronage.

43. My complaint is that the new cry for despatch at the cost of efficiency and the quality of judgments has undesirably shortened judgments: little law is discussed—a few facts are given: judgments now do not command one-half of the confidence they did before on account of their shortness and failure to discuss facts and law. That is the chief reason of multiplication of appeals.

44. No. Judges avoid it. This ought to be more frequently used.

45. Yes. No.

46. Yes.

47. Yes. The rules of the Judicial Commissioner's court that before commission is executed, no date for final hearing should be fixed has been an instrument of oppression to parties, as before, other evidence can go on simultaneously.

Written interrogatories except in very simple matters serve to defeat justice. I strongly oppose their use.

48. This is not abused: All depends on the judge's personality.

49. Some are—some are not: Press of work is responsible. Adjustment of work and jurisdiction is necessary.

52 (*a*) Frequent notices should be avoided.

(*b*) Granting of frequent adjournments to defendants should be avoided.

(*c*) Time and procedure of sale proclamations and claims and obstructions should be shortened.

(*d*) Security should be demanded, from claimants and obstructors, of a value to be fixed by the Judge.

(*e*) In the case of many mortgages frivolous and collusive suits are brought. Full security for the amounts involved should be demanded.

(*f*) Collector's procedure of selling lands should be shortened.

53. No.

54. Yes.

55. Yes. Section 47 ought to be enlarged.

56. Curtailing from 12 to 6 years not desirable, but the fiction of " a step in aid of execution" should be done away with.

58. The present Order 21, rule 2 works hardship. It leads to a multiplication of proceedings; all payments, certified and otherwise, should be recognised.

59. Suggestion is acceptable. Order 21, rule 16 (Cl. 2) can be abolished.

60. No objection: It should proceed against both person and property.

61. (*a & b*) None.

62. No change necessary.

63. No necessity. One notice is enough.

64. Both should issue together. It cannot be possible to serve it on vakils to be effective, on account of distance of their clients' residence from theirs.

65. No.

66. (*a & b*) File an affidavit.

There is no reason why a mortgagee should be compelled to do so. The defendant (mortgagor) should be directed specially to disclose previous and subsequent mortgages. He should be specially examined for the purpose. The plaintiff should then make all mortgagees parties and thus have all rights determined.

(*d*) Yes.

(*e*) Six months' time ought to be curtailed to 2 months after decree.

Personal decree should be made and the plaintiff may execute it either against the mortgaged property or any other property or person.

67. No.

68. Yes.

72. Not necessary to insist on.

73. The rule of insisting on certified copies, when original record is easily available, leads to loss of time and increase of costs. This insistence should be abandoned.

Mr. BHOJSINGH G. PAHLAJANI, M. L.C., Pleader, Sukkur, called and examined on Wednesday, the 10th September 1924.

Mr. Elphinstone.—*Q.* You are a member of the Legislative Council ?

Mr. Bhojsingh G. Pahlajani.—Yes.

Q. You have been for a good many years at the Bar in Sukkur ?

A. For the last thirty years.

Q. I see from your answers that you are not altogether satisfied with the efficiency of the subordinate judges ?

A. Yes.

Q. Have you any particular suggestion with regard to that ?

A. I have many suggestions. One thing that is at present wanting is that the appointments are made without having the real opinions of the district judges. The district judges do send in their recommendations, but they never take regard of the civil cases conducted by a candidate and see whether the man has conducted any important cases. He reports that he has done civil work for so many years, but that is not a criterion whether he has done any substantial work. The district judge should send for the records and see what important cases the man has conducted.

Q. I see you suggest that the age-limit of thirty years should be raised. Some of the witnesses have suggested that it should be raised to 35 years. Do you agree with that ?

A. I agree with that.

Q. And the period of practice should be five years—substantial practice ?

A. Yes.

Q. With regard to the district judges, can you tell me as to how much time they are able to devote to civil work ?

A. I think hardly one-twelfth of the time.

Q. A witness from Larkana told us that the district judge there was not able to devote more than six days in a year to his civil work.

A. I would place it a little higher at Sukkur. I would say not more than 15 days for the original work and about a month and a half for the appellate work.

Q. You do not find that the civil work is shut out by the criminal work ?

A. It is considerably at the time of inundation. From the end of June right up to the end of November we have what is called the criminal season of the district. Then the district judge does not get time to do any civil work except when the sessions fall through. In that case he gives notice that the appellate work will be taken.

Chairman.—*Q.* Why does the inundation affect the criminal work ?

A. In Sind there is considerable crime over the disputes about water. They break each other's heads and then they come to the criminal court.

Mr. Elphinstone.—*Q.* Do you think that the efficiency of the subordinate judges' courts would be improved by better inspection ? Do you think that there is sufficient inspection ?

A. I do not think that it will materially affect, unless the district judge is determined to make reports for the dismissal of those judges whom he finds to be inefficient; and that he would not do. We want a much better method of appointing a better subordinate judiciary.

Q. Are you in favour of the probationary period being really regarded as probationary, and that if a man is not found suitable his services should be dispensed with?

A. I do not think that the probationary period is necessary, if the district judge can really find out for himself as to whether the candidate has done real work.

Q. With regard to the efficiency bar is that enforced ?

A. It is never enforced.

Dr. DeSouza.—I do not quite follow about the inspection not being thorough and sufficient.

A. We have got three courts—Jacobabad, Shikarpur and Sukkur and Rohri. At Rohri and Sukkur the district judge does not give any personal attention. They are the headquarters. As for Jacobabad and Shikarpur he gives about ten days each.

Q. But that is ample—ten days at Jacobabad and ten days at Shikarpur ?

A. Provided the district judge goes actually into the cases himself.

Q. What does he do ?

A. Half the time he devotes to sessions work and perhaps the other time he devotes to the office work and only the last one day he devotes to personal inspection of the office.

Q. So actual inspection is not done at all ?

A. It is not done by the district judge; it is done by the sheristadar. The whole of the inspection, so far as I have been able to ascertain, is confined to matters of minute routine, which the subordinate judges themselves may omit.

Mr. Justice Stuart.—*Q.* Can it not be done like this ? The district judge can take up the plaint and see on what date it was filed and when the summons was issued. He can then examine these points: What did the judge do on that date, did he take up the case, if not, why not ? What did he do on the adjourned date ? Then as regards issues he should enquire whether the judge read the pleadings before framing issues and so on. The inspection is not done in this manner.

A. That is not done at all, but what I want is that inspection should be done on these lines. The district judge should try to know how much work was done on one day and so on. In many cases the amount of evidence recorded on the amount of work done does not show the time taken for that purpose.

Q. That can be done by having the subordinate judge by his side at the time of the inspection ?

A. The district judge may be very careful and conscientious and may give as much time to inspection as he can spare, but my difficulty is that the subordinate judges are not efficient and have not got the power of grasping a case. That is what my chief complaint is.

Q. Perhaps you know that they have now altered the whole system. I am talking of the rules of 1923. Have these rules been put into practice ?

A. They have been put into practice but they have done no good at all.

Q. Has no improvement been effected at all ?

A. None whatever. The selection committee goes more by reputation; I would not in any way say it goes by influence.

Q. I see under the rules they must have an interview with the candidates. Do they interview them ?

A. Yes, but interview does not do any good at all.

Q. But they can ask questions to discover whether the candidate can frame a plaint or whether he would be able to prepare a written statement to meet such and such a plaint and so on ? I think it is quite possible to do that?

A. Yes, but they will not do that.

Mr. Elphinstone.—Q. Do you think that judges come prepared with the cases ; have they any knowledge of the cases before they begin to examine the parties ?

A. Very few of them, and that is the reason why there is so much delay. If the judges come prepared they can examine the parties and the examination of the parties by the judge can considerably curtail other evidence. In majority of cases they do not read the pleadings and so are not in a position to know exactly what the case is about. The present judges are not able to grasp all the legal points. They can do so only when they go through the pleadings and by doing that they will be able to bring out all the legal points. Their want of knowledge in that direction is the chief reason why in many cases issues are framed by pleaders and not by the judges themselves. But there are some judges who read the pleadings and curtail the length of the case to a considerable extent.

Chairman.—Q. Do judges come punctually to courts ?

A. In head-quarters and other places where the work is very heavy they come to courts punctually, but where the cases are compromised in large numbers, they come at one or two o'clock.

Dr. DeSouza.—Q. What is the reason of the large number of compromises ? We find the number of compromises in Sind is very much larger than in any other part of India. Is it that people in Sind are more reasonable than other people or is there some other reason ?

A. I think they are not more reasonable, and human nature is the same all over the world. You will find that in certain courts there is a tendency among judges to call the parties and ask them to compromise.

Mr. Elphinstone.—Q. Do you think that judges sometimes ask them to refer their disputes to arbitration ?

A. In some cases judges do ask them to go and refer to arbitration once, twice or thrice.

Mr. Justice Stuart.—Q. Is that because the judges in Sind have not sufficient confidence in themselves?

A. I think it is due to want of confidence and also they have not much inclination to try complicated cases.

Mr. Elphinstone.—Q. What is your opinion with regard to *ex parte* injunctions ? Do you think there should be any check ?

A. I think it is not necessary to put any check, but the judges should be more careful. Some judges are very careful about that, though the law is exactly the same for all judges.

Chairman.—I see the point is this. The lower courts do not quite understand the difference between *interim* injunctions and *ex parte* injunctions.

A. Yes.

Mr. Elphinstone.—Q. What is your opinion about the work of the nazir, do you think he is very hard worked ?

A. It all depends upon the territorial jurisdiction. In places like Shikarpur where the territorial jurisdiction is very large, the nazir is really over-worked. He has to do a lot of other work and he cannot attend to the work of process serving and cannot keep proper control over bailiffs.

Q. Do you think if he were given a deputy nazir he would be able to look after this work ?

A. So far as the taking of work is concerned, the bailiffs' morale is low.

Q. Of course the morale of bailiffs is very low. Do you think that with better supervision the service of the processes would be better ?

A. I think so, but it all depends upon the judge. If the judge looks into the processes himself once a month if not more often, I think the bailiffs will be more careful, and their morale would be improved. I know of a judge who used to look into the processes himself occasionally and the bailiffs were all afraid of him.

Dr. DeSouza.—Q. Did you hear the last witness giving evidence on this point ?

A. I could not follow him.

Q. He said that so far as the nazir is concerned his time is taken up in doing the work of an official receiver in insolvency and that he could hardly spare half an hour to look into the work of supervision. Do you consider it at all necessary that he should be appointed official receiver ?

A. I don't think it is necessary at all.

Q. Whom would you suggest for this appointment ? The witness said that the parties want the nazir as official receiver. Is that your experience ?

A. I think the head clerk or the sheristadar should be entrusted with this sort of work.

Q. There is sometimes objection for appointing these clerks as official receivers. Would it not be better if the pleaders are appointed ?

A. Not the slightest harm.

Q. Is there any reason why the nazir should be taken away from his own duties ?

A. I think it is better not to appoint the nazir.

Q. The commission charged is 5 per cent. Does it go to the nazir's pocket or does it go to the Government ?

A. I believe it goes to him though I am not sure.

Q. My idea is that it goes to the Government.

A. I am not sure.

Chairman.—Q. Is there a separate nazir for the district court and a separate one for the first class subordinate judge ?

A. We have got an accountant for the district court and a nazir for the subordinate judge's court.

Q. Who is doing the work of a nazir for the district court.

A. There is also a nazir for the district court but he is designated as accountant.

Mr. Elphinstone.—Q. Do you find the insolvency work here satisfactory ? Do you get proper returns, that is, reasonable dividends ?

A. Dividends are hardly 1 per cent. The impression is that the insolvency proceedings are taken only to deceive the creditors.

Q. What would you suggest as an improvement ?

A. Better use of criminal proceedings and of the Insolvency Act.

Q. Do you think that the procedure laid down in Secs. 69 and 70 is rather too long ? How long does it take in the mufussil to institute a prosecution ?

A. I do not know of any instance in which Sec. 69 was applied.

Q. Do you think that Secs. 421, 422 and 423 of the I.P.C. should be more frequently employed ?

A. I think so.

Q. Would you be in favour of the proceedings under Secs. 421, 422 and 423 being undertaken by the court instead of by the plaintiff ?

A. Yes.

Q. Would you be also in favour of cutting down the right of appeal against the order for prosecution ? You have to get first of all a recommendation from the official receiver for prosecution and then in due course of time it goes to the insolvency judge and he sanctions it and then it is taken before two judges on appeal and after a few years the matter will be sent to the official receiver again for further inquiry. Now would it not be better to cut down this right of appeal ?

A. I think the debtor ought to get an opportunity of being heard by a judge.

Q. One hearing would be quite sufficient ?

A. I think there should not be any right of appeal from the insolvency judge's order.

Q. You advocate readjustment of jurisdiction. Do you think that that would considerably expedite the work ?

A. Yes.

Q. Then you suggest that more suits should go up for first hearing before the court, instead of written statements being filed. Do you think that by this method the work could be reduced ?

A. I think in certain cases it is feasible.

Q. You want to have the defendant examined at the first hearing. That will not be summary procedure. That is the procedure which we have here in the Judicial Commissioner's court in mortgage suits.

A. Yes.

Chairman.—Summons for final disposal instead of settlement of issues.

A. Yes. Many simple suits can be disposed of in that way.

Q. Do you find that in your courts the judge always calls for a list with a view to seeing whether a case is going to be undefended or whether it will take a very little time so that it may be disposed of first, or is it postponed for the next date, if not reached, and then again postponed if again not reached, and ultimately it turns out to be undefended ?

A. That happens in many cases. And they also put too many contested cases for one day, more than they can hope to deal with. I will prefer even a case to be postponed for three months after the issues, but it should be made sure that it would be taken up on that date.

Q. It does not assist in the disposal in any way nor does it help anybody ?

A. No.

Q. Let a case be given a date three months hence or if the court is very much congested six months, as the case may be ?

A. Yes. There was one judge, who has retired now, and he used to post cases six months hence and there was no arrear in his court. If any case falls through he can devote his time to writing judgments.

Mr. Elphinstone. If Saturday were not kept for writing judgments and fewer cases were put down for each day and judgments written in any spare time, would that, in your opinion, be a much better method ?

A. Yes.

Q. How many cases are fixed each day for long hearing ?

A. It all depends upon the tendency of the judge. Some judges fix five or six in the hope that two or three might be compromised.

Q. I see you suggest that mortgage suits should be triable by small cause court judges. Do you think that suits involving title should be so tried ?

A. Suits raising questions of title or priority should be transferred to the other courts. They should not be left to the small cause courts. Ordinary mortgage suits may be dealt with by the small cause courts.

Q. I see you suggest that it would be impracticable to require the parties to give registered addresses on which service should be good for all purposes. What is your reason for that ?

A. It is impossible in rural areas.

Q. But in such cases the client can give his pleader's address ?

A. The party may have no pleader. Three-fourths of the cases of the mofussil are undefended in sub-courts and you know, in Sind, the system of Muhammadan

cultivators. They move from village to village and from one district to another. I am speaking of the agriculturists and the cultivators and not of the zamindars.

Q. If it is difficult with one class there does not seem any reason why it should not be used, for instance, by town dwellers ?

A. I think in towns it can be used.

Q. That can also be extended to witnesses ?

A. I do not think so.

Q. In your court are not the witnesses bound over before they are discharged ?

A. They give only their signatures to the nazir to attend the next hearing.

Q. Does it take a long time to serve the witnesses ?

A. Yes. There is great complaint.

Q. If you have the addresses of the witnesses then you can cut down that time by using the post.

A. Personally I think that the subordinate judges should be strict in the attendance of the witnesses, as in criminal courts.

Chairman.—There is no difficulty in criminal courts ?

A. No. There the witnesses have to give a bond that if they do not attend they would forfeit so many rupees.

Q. The man's *subpœna* requires him to attend not only on that particular date, but until the case goes on, and if a man is given his batta and told the date of the next hearing, it is really unnecessary for him to give a bond. He can be prosecuted on the *subpœna* if he wilfully defaults.

A. The same procedure as in the criminal courts should be applied in the civil courts.

Q. If a man does not turn up he forfeits the bond ?

A. Yes.

Q. And he forfeits the money ?

A. We recover it as a fine.

Q. You can always fine the man for disobedience of the *subpœna* without going into the unnecessary formality of having a bond ?

A. It only produces a certain kind of feeling that he ought to attend to civil court processes.

Q. Do you think there is any point in making him execute the bond ?

A. That is one thing, but there is another point. The issue of compulsory process should not be dependant on the option of the parties, as it is done at present. I do not think any man with some common sense will go to the extent of having his witnesses harassed in that way. That will make his witnesses hostile towards him. If that power is left with the judge himself and he does not consult the parties at all, then the witnesses will be afraid more of the judge than of the parties.

Mr. Elphinstone.—I see you are in favour of extending the application of Order 37 to all registered bonds against non-agriculturists ?

A. Especially when people can read and write.

Q. In the mofussil majority of people are illiterate ?

A. In the mofussil they have got the thumb impression. That is a very great preventive against forgery.

Q. I see you also advocate payments out of court being recognised ?

A. Yes.

Q. But a witness who came on Monday said that you would get a very large number of false payments being set up, if that were extended to other cases ?

A. That is very likely to be abused, but there is one thing which can be easily done, *i.e.*, payments should be recognised which are proved by receipts.

Q. Is it usual for a pleader to be engaged for the whole of the proceedings including execution proceedings or does his engagement generally end with the decree ? I think that is the reason why you suggest that it would be no use sending notices to the pleader for execution proceedings.

A. Yes.

Q. Well, there is another point which has been mentioned by some of the witnesses. Supposing there is a liquidated claim or a claim founded on a document signed by the defendant and the defendant is unable to show a *primâ facie* good defence. We have a large number of such cases in Karachi where the defence is false and still the man drags it on for three or four years and the judgment creditor gets an empty decree. Do you think in such cases where the defendant is not able to show a *primâ facie* defence although it is a defence which cannot be struck off straightaway, the court should be permitted to demand security from the defendant ?

A. I think in that case the judge will pre-judge the sufficiency of the defence. The court must record definite evidence that there is no *primâ facie* defence. In all cases, except cases on negotiable instruments, there are so many defences open that this procedure would appear to be dangerous.

Q. The magistrate is not thought to have pre-judged the case if he thinks there is a *primâ facie* case and frames a charge and puts the man on his defence, similarly when the plaintiff has paid the Government court-fees and has got a clear case, why should he only get an empty decree after three or four years' time ? Do you not think that that is a sufficient reason to warrant such a procedure ?

A. That is very likely to be abused and I would not advocate its application in the mofussil. I cannot advocate the employment of such a drastic procedure in the mofussil courts.

Q. Would you be in favour of extending the range of a summons from two hundred to three hundred miles to prevent the issuing of unnecessary commissions ?

A. I would advocate 350 miles. Jacobabad is more than 300 miles and I think both Shikarpur and Sukkur are 299 miles from Karachi.

Q. Would you be in favour of commissions out of the province being restricted in the same way as commissions out of British India under Rule 5 of Order 26 ?

A. I think it is exactly the same thing as Rule 2. There you have to put in an affidavit.

Q. I understand there is some difference between the two ?

A. Yes.

Q. Have you ever found in your experience that people apply for commission only to prolong the case ?

A. It is due to the new rules framed by the Judicial Commissioner. The Judicial Commissioner has issued rules that the case has to be held up till the commission returns, but I think that is not necessary.

Q. How can you dispose of the case till the commission is returned ?

A. Commission can issue simultaneously with the hearing of the rest of the evidence. At present it is a source of considerable delay.

Q. Do you think the work of drawing up of mortgages is done satisfactorily by bond writers ?

A. I have not found much fault with the system.

Q. Is the bulk of the work done by bond writers or pleaders in Sukkur ?

A. By bond writers.

Q. How many men have you got in the Sukkur Bar.

A. 35.

Q. In Shikarpur ?

A. The same number.

Q. In Larkhana ?

A. 30

Chairman.—*Q.* Do you get petition-writers to draw the plaints and pleadings or do the pleaders do that work ?

A. Now this sort of work is done by the pleaders more or less.

Q. So that you do not find any difficulty on account of the very badly drawn plaints by the petition-writers ?

A. I don't think.

Written statement of Mr. MULCHAND KHIALDAS (Salesman and Guaranteed Broker to Messrs. E. D. SASSOON & Co. Ltd., Karachi).

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1. I think the period reasonably required for the disposal in the Judicial Commissioner's court of—

(*a*) original suits especially commercial suits should not be more than 12 months ;

(*b*) first appeals, not more than 9 months ; and

(*c*) second and miscellaneous appeals, not more than 6 months, and that for the disposal of original suits in the small cause court should be about 3 months.

2. The period actually taken now especially in the Judicial Commissioner's Court for the disposal of such proceedings does exceed the limits referred to above. The main causes of the delay are —

(*a*) Fixing of distant dates for the hearings, which are no doubt due to the accumulation of too many old cases.

(*b*) Much time taken in the service of summons.

(*c*) Too many postponements allowed by the courts on account of the mutual consent of the pleaders of both the parties.

(*d*) Some of the judges in the courts, where the majority of the proceedings are commercial, probably not having the full knowledge of the various local commercial practices and trade usages.

(*e*) Various tactics adopted by the defendants to gain time, and the corruption amongst some of the clerical staff.

The remedies in my opinion are —

(*a*) The service of summons by registered post.

(*b*) All the judges to be recruited from those having sufficient knowledge of the local commercial practices and trade usages.

(*c*) In order to discourage frivolous suits, to make a provision so as to allow compensatory costs against all frivolous suits and frivolous defences.

(*d*) Not to allow evidence to be taken on commission without having a security.

(*e*) Not to allow frequent postponements merely on the mutual consent of both the parties' pleaders, who arrange such postponements to suit their convenience.

8. Not in our province.

21. I do not agree to the suggestion of the appellant being compelled to deposit the decretal amount in full before the filing of second appeal, but at the

same time I would suggest that the stay of execution proceedings should not be allowed on account of the filing of second appeal.

24. I would here repeat my answer to Question 3.

25. The remedy I would suggest for this is that the summons should be sent by registered post. Of course the full address of the last place of the defendant's business or residence to be given in the plaint. I do not think that the procedure under section 106 of the Transfer of Property Act should be made applicable in this case, as the difficulty in question regarding the service of summons is mostly experienced in the cases where the summons are to be served in mofussil and not in local cases.

28. (First part). I would here repeat my answer to the Question No. 25 and as regards second part my answer is in the negative.

29. Yes. I have already referred to this in my answer to Question No. 25.

30. I am in favour of this suggestion, but this practice is already in existence here in most of the cases.

47. (First part). To shorten the length of time, I would suggest the court to order a security being furnished before reissue of the commission. The practice of written interrogatories except by special leave of the judge is already in existence in this province.

51. I am in favour of the suggestion that the commercial suits should always be given preference over other suits as far as possible. I would suggest that an early hearing should be fixed for all such suits and that they should be tried in preference to other suits.

65. No. There is no such village headman in our province.

67. No. I do not think it is so in our province.

68. Yes. The decretal amount should be deposited by the judgment debtor and sufficient security should be given by the decree holder while withdrawing the amount, after due notice by the court to the judgment debtor.

69. (First part). No. (Second part) Yes, there is an avoidable delay in the disposal of insolvency petitions and realization of assets. The devolution of the exclusive jurisdiction, which a district judge has, would no doubt make for speed in such matters, but it seems risky. I would suggest that in order to expedite the realization of assets an advisory committee of at least two of the principal creditors be appointed to assist and advise the official receiver.

82. No. But I think such frivolous suits can be put down by making a provision by which the court may be empowered to allow compensatory costs.

Mr. MULCHAND KHIALDAS called and examined on Wednesday, the 10th September 1924.

Chairman.—Q. Are you a broker ?

A. Yes. Guaranteed broker.

Q. Of Messrs. E. D. Sassoon & Co. ?

A. Yes.

Q. So that you know of legal matters from the commercial point of view ?

A. Yes.

Q. What is the bulk of the commercial work in Karachi. Are they suits for goods sold and delivered ?

A. Majority of cases are as regards breaches of contract.

Q. And also damages for non-acceptance ?

A. Yes, and also for non-delivery.

Q. Do you get a good deal of commercial work under Rs. 1,000 in Karachi ? Are the small cause court cases of a commercial nature ?

A. Yes. They are also over Rs. 1,000.

Q. Are many of them under Rs. 1,000 or over Rs. 1,000 ?

A. Cases over Rs. 1,000 are more.

Q. If you have a small cause court here on the lines of a presidency small cause court, *i.e.*, you have jurisdiction up to Rs. 2,000 and the defendant on giving security could go to the Judicial Commissioner and the plaintiff should bring his suit for Rs. 2,000 in the small cause court, do you think that that would be an improvement ? Are there any commercial cases between Rs. 1,000 and 2,000 which require greater expedition than they are getting now ?

A. I think it is a good thing.

Q. As regards those cases which come to the Judicial Commissioner's court, do you have a separate list for commercial cases ?

A. I don't think there is a separate list.

Q. Have you not a system here in which a case is marked for the commercial list and is given special expedition ?

A. No. There is no special arrangement.

Q. I understand that Order 37 applies to negotiable instruments in the Judicial Commissioner's court. Does it ?

A. Yes.

Q. No other class of suit is treated in that way. There is no provision for summary judgments ?

A. No.

Q. So far as Karachi is concerned do you think that Order 37 should be applied in the same way as is done in Bombay, *i.e.*, suits on promissory notes and liquidated claims, etc. ? Do you think something might be done as regards that in Karachi ?

A. I think the improvement that is made in the presidency towns should also be made here.

Q. Have you any experience of suits under Order 37—suits on Hundis ?

A. No.

Q. Have you any experience of appearing in the Judicial Commissioner's Court as a witness ?

A. Yes.

Q. Do you think that the witnesses have to come over and over again or are they examined on the first date of hearing ?

A. No, there have been many adjournments.

Q. Are the lists here too long ?

A. Yes.

Q. Do you have many cases all depending on the same point ? What are these sugar cases ? Are these cases such as are dependent on one point ?

A. Good many of these cases can be decided on one point.

Q. There was recently an occasion when people made contracts for sugar from Java and owing to circumstances, which nobody could help, there was no shipment in the month argeed upon ?

A. Yes.

Q. It was simply a particular exigency that took place two or three years ago ?

A. Yes. That was on account of the war.

Q. We had the same in Calcutta. All these questions sometimes hang on the same string. Apart from cases like these, you think that there is a tendency to put down too much work ?

A. Yes.

Q. And so a number of cases have to be given another date as a result of postponement ?

A. Yes. On account of accumulation of cases good many are postponed.

Q. And when a case is taken it is not always finished ?

A. It is not taken up continuously.

Q. In Karachi is there any reason why the summons should not be served by registered post ?

A. As far as Karachi itself is concerned, even if it is not registered, it has been possible to effect service when the parties attend to it.

Q. You mean somebody going with the bailiff ?

A. Yes.

Q. There is not much difficulty in Karachi ?

A. No.

Q. I take it that in a place like Karachi you have got named streets and houses are numbered.

A. Yes.

Q. Have you had any difficulty in connection with the issue of commissions to take evidence ?

A. No.

Q. Now, what about insolvency in Karachi ? Have you had any experience as to that ?

A. Yes.

Q. What do you think about the way in which that work is done ? Are assets collected and the dividend paid in a reasonable time ?

A. I do not think so.

Q. Why is that ?

A. Too much work for one official receiver.

Q. You think that he has got too much to do ?

A. Yes.

Mr. Elphinstone.—*Q.* You have had trustees appointed in some cases ?

A. In very few cases.

Q. They have always been unsatisfactory ?

A. Yes.

Chairman.—*Q.* Do you think that it is necessary in India to have always an official receiver ? In England you have an official receiver to begin with and then the creditors appoint their own trustees.

A. We had trustees appointed here in some cases, but they were not found to be satisfactory.

Q. Have you any particular point as regards the Arbitration Law ?

A. No.

Q. Have you had any difficulty, for instance, where you get awards in your favor and you cannot get them executed because frivolous applications are made to the law courts ?

A. Yes, that has been so in connection with awards passed against upcountry defendants.

Q. Then what would you like to see done—some method by which the courts upcountry should not be allowed to stay the suits ?

A. Yes.

Q. Have you got anything to complain as regards the *ex parte* injunctions being granted too lightly ?

A. No.

Q. I see that you are very much in favour of an advisory committee of the creditors being appointed to assist in insolvency ?

A. Yes, because in that case it will be to the interest of the creditors to see to the speedy realisation of assets. They can be expected to find better means.

Q. They know far more about the assets and how to dispose of in their own lines better than the official receiver ?

A. Yes.

Q. The Presidency Towns Insolvency Act includes power to appoint such a committee and if that is applied to Karachi that will meet the point ?

A. Yes. It has been done in one or two instances.

Q. I do not know whether the Provincial Insolvency Act allows it. Of course there is nothing to prevent such a committee being appointed even if there is no statutory provision, but there is a provision for that in the Presidency Towns Insolvency Act.

Written statement of Mr. R. T. F. KIRK, I.C.S., District Judge, Larkhana.

1-A(2). District and subordinate courts.

The period required for the disposal of an original suit in a district court should be 12 months, for such suits are brought against the Secretary of State or the Manager, Encumbered Estates in Sind. The defence in such suits is sanctioned by Government and therefore it is a long time before it is filed. The progress of such suits in district courts is retarded by preference being given to sessions cases and criminal appeals in which the accused are in jail. The criminal work in this district is heavy.

An original suit in a subordinate court, whether relating to title or money, should not take more than 4 months.

A regular civil appeal should not take more than 6 months.

A miscellaneous civil appeal should not take more than 3 months.

A small cause suit should not take more than 6 weeks.

(B) A claim proceeding in a subordinate court should not take more than 3 months.

2. The period actually taken during the last 3 years was as follows :—

Civil suits district court . . .	3,393 days, *i.e.*, average	131	days
„ F. C. court, Larkana . . .	93 average	108	days.
Subordinate courts, Title . .	701			
Money	12,382	„	183	„
	13,083			
Regular appeals	132	„	194	„
Miscellaneous civil appeals	10	„	423	„
Small causes	4,647	„	30	„
Claim cases—				
F. C. court, Larkana	6	„	159	„
Subordinate courts.	139	„	166	„

From this it will be noticed that each miscellaneous civil appeal took about 15 months. This was due to heavy sessions work and the death of some parties

and the joinder of their legal representatives for which formerly the period fixed was 6 months and it is 3 months now. Too much time will appear to have been taken in the disposal of claim cases. The delay appears to be due to non-service of notices and summonses.

3. It can hardly be doubted that the most effective mode of shortening the period of disposal of civil proceedings is to increase the number of subordinate judges or open temporary courts which can move from place to place wherever arrears are thickest. This plan is outside the scope of the Committee's enquiry. To a considerable extent the prolongation of proceedings is due to causes inherent in the character of the litigating public, the pleaders and the subordinate judicial staff. The public want adjournments very frequently because they are too apathetic and unbusinesslike to take the steps necessary to get their cases ready for trial. They have but hazy ideas of promptness and punctuality, they can see no reason why they should not get an adjournment whenever they want it, and they rely on the cleverness of their pleader in inventing some expedient which will delude the court into granting a postponement. It is too easy to create delay purposely by bribing clerks in the offices to keep back papers on false pretexts which are easier to invent than to prevent. A rupee or two spent in the sheristadar's branch of the office will keep the application for process back a day or two before it gets to the nazir. A little more money there will delay it a day or two before it is handed over for service to a bailiff: and the bailiff, of course, is easily bought over to return the process as unserved for one or half a dozen reasons. This may be done by a litigant who wishes to delay the process of his opponent, or by one who wishes to keep a case hanging over the head of his opponent as long as possible and yet make it appear that he has taken all possible steps in the prosecution of his own case but owing to the failure of the court officials to ensure service he has failed to get his necessary evidence for no fault of his own and therefore deserves a postponement. Process servers often do not serve because they have not been paid the customary dastoori, when the witness resides in the jurisdiction of another subordinate court and the party taking out process is not present to smooth the way. Often parties summon a number of witnesses with the object of impressing the opponents when those witnesses have in reality no evidence to give: and then the process-server is sometimes paid not to serve the witnesses. This trick is resorted to by defendants who have no defence.

I am confident that service can be improved if subordinate judges will pay special attention to the matter and refuse to issue fresh process to a bailiff until he has served all the processes entrusted to him in a particular case. He should be sent back repeatedly with the same processes until they are served. It would also conduce to good sevice if bailiffs were paid wholly or partly in fees—so much for each process served. The introduction of this fee system would assist to lessen the evil of " dastoori."

When all else fails litigants sometimes absent themselves purposely so that an *ex parte* decree is given against them, whereupon they try to induce the court to set it aside alleging all kinds of false pretexts for their non-appearance. Whatever may be the moral obliquity of the establishment and even of the pleaders in lending themselves to this species of customary corruption, the real fault is with the public themselves who will always try to gain an improper advantage by these circuitous methods. The theory exists that by raising the pay of the subordinate establishment a better class of employee will be got who will be less corruptible. It may be doubted whether in a province like Sind where in all departments the habits of bakhshish and dastoori are ingrained in a much more marked degree than in the presidency of Bombay a better paid subordinate will accept less. On the contrary he is apt to demand more, and to keep his fees up in proportion as his status is enhanced. The amount of money available in rich districts and the great local influence of zamindars are potent factors to contend with. Also the standard of life of the ordinary cultivator is much higher than in that presidency. He spends more money on amusements and comforts, and is a regular mine of wealth to the small official who is on the look-out for bakhshish. To root out this evil is extraordinarily difficult as evidence in suspected cases is almost impossible to procure.

Similarly money is always available for supporting false allegations and false defences and in a hotly contested case the exploitation of every possible expedient on both sides materially lengthens the trial. It is difficult for a judge to throw out applications summarily though he instinctively knows them to be groundless as he has to comply with the law and the slightest failure to do so causes still further delay by being made a ground of appeal. Subordinate judges are almost too careful in handling these matters, and though many appeals are based on their refusals to grant postponements it is seldom indeed that the district court interferes with their proceedings. They are, if anything, too cautious, and should be even stricter in granting adjournments.

Everything should be done to save a judge's time and husband his energies. If he sits 5 hours in court and spends an hour or two outside court in writing or dictating judgments, his day is full of work. He should be relieved of the intolerable labour of writing down all the evidence in his own hand—a labour which in my opinion impairs his efficiency considerably. He has to keep his eyes fixed on the page instead of on the witness and must lose many valuable impressions of the witness's feelings and demeanour. The physical effort which is in itself an intolerable strain for 5 hours, especially in the high temperature of the summer, *pro tanto* reduces his mental energy. He is apt to become a machine for writing down evidence and may occasionally write sentences without applying his mind at all to the witness's meaning. His handwriting becomes illegible and an appellate judge wastes hours in trying to read it. The pleaders waste time in waiting for the judge to write down each answer before they ask the next question. Time is wasted through mistakes in copies. Courts should be supplied with shorthand-writers, and judges in civil and criminal cases should be spared the duty of recording evidence in their own hand. In criminal districts where there are many sessions cases, the help of *competent* shorthand-writers on good pay to record evidence and take down judgments, will release the district judge to attend to civil appellate and other work instead of spending so much time in the sessions court as he has to do now in Hyderabad, Sukkur and Larkana. (In Sukkur and Larkana certain clerks have tried to learn shorthand, and get an allowance of about Rs. 15 per month for having gone for training to Bombay, but I find less time is wasted in the end if they take down judgments in long hand.)

It would not be safe to give judges power to fix a limit of time for the examination of witnesses. Such a plan would be unworkable, and would lead to friction between Bench and Bar. A remark from the judge is usually enough to make pleaders realise when their examination is too lengthy.

A frequent cause of waste of time is the apparent inability of pleaders to refrain from harping on points which they know to be entirely valueless, and from asking questions simply because their clients want those questions to be asked, however useless. Pleaders are not willing to concentrate on what they know to be the real points of the case, nor are they sufficiently willing to take responsibility. There is too much competition amongst them. They are far too numerous and the struggle to procure and keep their clients is too acute. Hence they are too much at the mercy of their clients and too often make speeches of quantity without quality because their clients must be made to feel that they are getting their money's worth. The only remedy I can suggest is that the standard of the pleaders' examination should be raised so as to diminish their numbers: the plan of limiting the numbers of pleaders allowed to practise in certain courts does not appear fair or feasible.

I see no reason to suppose that alterations in the methods of recruitment of judicial officers will speed up the disposal of cases.

Delay is largely due to non-service of process, and to deaths of parties necessitating the joining of their representatives. In so far as the former cause is due to incompetence of bailiffs, the introduction of higher pay will no doubt in time produce some effect in procuring more competent men. Service through the post office would be useful though not much in many scattered villages where the postal service is infrequent.

If judges really made a point of exercising their influence, which is so considerable, on the Bar, and as it were, kept up a continuous united campaign to encourage pleaders who are willing to get through cases quickly, I feel sure that the creation of such an atmosphere would be more helpful than any number of alterations in the rules. They could also improve the efficiency of their establishment by insisting on better work.

7. The standard of efficiency of an officer should depend chiefly on the amount of really contested cases he gets through, and (what is very much the same thing) the progress that he can make in reducing arrears. District judges in Sind, owing to heavy criminal work, and work over minors' estates (the last in Sukkur and Hyderabad) have no time to really scrutinize subordinate judges' work and find out what they are really doing. It would be an excellent thing if a very senior inspecting subordinate judge could go from district to district and specially attend to this work which requires much time, trouble and experience. At present the amount of work done perforce depends very largely on the sense of honour of the subordinate judges themselves. In Sukkur district where I paid special attention to the returns, I noticed a most extraordinary sameness in the numbers of disposals month by month. On going back a year or two I concluded that in each court it was customary to send up a return showing certain numbers month by month, and it was quite obvious that subordinate judges were careful not to exceed the customary limit. On my pointing out this fact to them, the arrears began to be reduced more noticeably.

The circular providing that suits in which evidence or arguments have been based on points contested between the parties even though ultimately compromised, referred to arbitration or dismissed for default, should be modified so as to treat only those cases as contested in which evidence has been recorded and judgment given on the issues. It is not unknown for judges to get a case opened, examine the plaintiff only, and shortly, and then get a compromise or reference from the parties and show the case as contested.

Generally speaking, the amount of work an officer does is the test of his efficiency. The best men do the most work. If there are complaints of delay in obtaining copies, these can be obviated by increasing the number of copyists until all ordinary copies can be furnished on the day of application. There is absolutely no reason why applicants should be kept waiting for days. A threat to the copyists is sufficient. They must not be employed on anything but copying work.

8. Not in this district nor in Sukkur. There is some trouble sometimes in Hyderabad, I believe.

9. Yes. 1st class subordinate judge should be invested with small cause powers up to Rs. 1,000 instead of Rs. 500 as at present, and 2nd class subordinate judge up to Rs. 500 instead of Rs. 200.

The value of money has decreased. Suits on an account against agriculturists should be tried as small causes.

12. Yes. The district judge should be relieved as far as possible of administrative work which can be an intolerable nuisance to him and is of the very greatest importance. Subordinate courts should be given power to deal with applications under Act VIII of 1890, Act V of 1881, Regulation VIII of 1827 and Act I of 1905.

13. I know of no reason why probate and succession proceedings should not go on in subordinate courts, or why such a change should not be acceptable to the public. These proceedings are very often of a formal nature.

As regards land acquisition jurisdiction, owing to the influential interests which may be involved I think it is doubtful whether it should be taken away from the district court. The land acquisition officer is often a high official and it is not altogether fitting that his actions should be subject to the criticism of an inferior court. Apart from this question of official dignity, the subordinate court might be reluctant to interfere on account of the status of the officer, in which case the hands of justice would be tied.

Take a concrete instance : there is a special officer now on duty, of Collector's rank, acquiring lands in (presumably) enormous quantities for the Lloyd Barrage Scheme. Great interests are involved of the land holding class to which many Sindhi subordinate judges belong on the one hand, and official financial interests on the other. It seems desirable that such cases should come before a high tribunal.

22. Yes, in my court. One would suppose that the desire to weed out futile or groundless appeals at the earliest possible stage and to save itself future trouble would be enough to induce any court to apply this rule regularly.

24. Cases of ejectment, and simple mortgages might be brought under small cause jurisdiction or if not, the C. P. C. should direct that upto limit of Rs. 200 they should be fixed for final hearing straight off. Applications for witnesses should be carefully scrutinised when presented and the pleaders asked to show their necessity. If in the end any witness is unnecessarily summoned the costs should be specially borne by the party calling him.

25. The provisions of Order 5, rule 20 (substituted service) should be freely exercised with the reservation that 2 months should be considered the maximum period within which a defendant must be served in the ordinary way. After two months, substituted service should always be adopted and before two months when it appears that the defendant is avoiding service purposely.

The application of the procedure under section 106 of the Transfer of Property Act might lead to frauds.

28. Yes, on the whole it would : but there are outlying villages where registered post would not be effective.

Headmen should be appointed in the villages and summons sent to them for service. In many villages there are no village officials like tapedars, or paid munshis.

29. Yes.

30. It should be done.

33. Yes : it would tend to lessen the number of false defences. The examination should be at the first hearing before issues are settled or if the suit is set down for final hearing the parties should be examined before their witnesses are called. The strength or weakness of their cases will then be realised and many settlements will be made out of court.

41. There is delay due to this cause, and the suggestion made in the latter part of the question should be adopted.

43. No.

44. Yes.

45. No. The dates of hearing are usually given by sheristadars, and first adjournments—where both sides agree (as the pleaders almost invariably do)—are also granted by sheristadars. I am informed that in almost any case a pleader can obtain a first or second adjournment. The knowledge of this has a demoralising effect on litigants. The sub-judge, of course, has usually other work to do and can always fill in his time. If one pleader wants an adjournment it seems to be almost a matter of course that the opposing pleader will not object. If the first pleader raises a personal ground of having other work, or not being well, of course the opposing pleader does not dream of objecting. In fact I understand that applications for postponements are hardly ever opposed.

There are two methods of dealing with this irregularity. One is for the subordinate judge himself to make the orders of adjournment, and the alternative is for the sheristadar to be given full power and responsibility to make orders of first adjournment. At present the sheristadar has no real responsibility—he makes the order in fact, and the formal responsibility is that of the subordinate judge.

48. Yes. Generally no order is made about costs because the opposing pleader nearly always consents to oblige his friend. The written application and affidavit

should be insisted on, and an order for costs should be made irrespective of the consent of the other side.

49. They are not tried continuously in subordiate courts. If some witnesses of either party are not served the courts nearly always postpone the cases on receiving applications for adjournments from the parties. The parties' pleaders and the courts themselves are all responsible for the delay. Rule 28, chapter V, page 76 of the Sind Courts Civil Circulars should be strictly enforced.

50. The district judge usually inspects the subordinate courts once a year or once in two years. This inspection, however, is not the effective and continuing supervision that is necessary to ensure speedy disposal of work. It is impossible for the district judge to exercise that kind of continuous control which is necessary. He has his own work to do—largely criminal.

So far as Sind is concerned, district judges look forward to a short tour of inspection as a welcome change from monotonous work at headquarters. No urging from the Judicial Commissioner is required to ensure inspection of sub courts.

54. The courts to which a decree is transferred should have the powers described.

58. Yes.

59. The transferee should be allowed to execute the decree as suggested. The second proviso to Order 21, Rule 16, can be deleted.

Mr. R. T. F. KIRK, I.C.S., District Judge, Larkhana, called and examined on Thursday, the 11th September 1924.

Mr. Justice Stuart.—*Q.* How long have you been a district judge ?

A. Since 1915.

Q. All the time in judicial service ?

A. Yes in Bombay and Sindh.

Q. Have you been in all the three districts in Sind ?

A. Yes, Hyderabad, Sukkur and Larkhana.

Q. In your opinion is it necessary to make a provision of law by which all suits in which the Secretary of State is a party should be tried by the district judge ?

A. Yes.

Q. Have you ever contemplated the following limitation, *viz.*, that they should be filed in the district judge's court and he should have the power of transferring such cases as he thinks fit ?

A. I think that would be alright.

Q. That would be more convenient ?

A. Yes.

Dr. DeSouza.—*Q.* What is the class of suits that is instituted in the district judge's court at Larkhana against the Secretary of State ?

A. There are three classes. One is land acquisition cases.

Q. I am not speaking of land acquisition cases but I am speaking of regular suits.

A. I now understand that. There are three classes but I don't know now what they are.

Q. Did you dispose of some in Hyderabad ?

A. Yes.

Q. What was the nature of those suits ?

A. Those were suits against the Secretary of State refusing zamindars the *karia*.

Q. Any other kind you remember ?

A. In fact I have very little experience of these cases. The whole of my time is taken by the sessions cases.

Q. But you must have heard those cases.

A. They are sooner or later withdrawn or compromised.

Mr. Justice Stuart.—Q. At Larkhana how much of your time is taken up by criminal work ?

A. 4/5ths.

Q. Then you have very little time to attend to your civil work ?

A. Yes.

Q. What is your opinion of the provincial judicial staff ? On the whole do you find them hard working ?

A. I don't think they are so hard working in Sind as they are in Bombay.

Q. Is there any particular reason for that ?

A. I think Sind is somewhat backward.

Q. What check do you have as to their attendance in court ?

A. No check at all.

Q. Would you approve of the introduction of a time sheet ?

A. It would be useful if accurately worked upon.

Q. Should the judge enter his hours of coming and hours of going ?

A. I think he should.

Q. Could you check the accuracy of the entries by surprise visits ?

A. Yes.

Dr. DeSouza.—Q. I understand that in other provinces except in Madras they have a time sheet in force not only for the subordinate judges but for the district judges too. Would you be in favour of that ?

A. Yes.

Q. Don't you think that they would resent this and say that they would not like to be treated like school boys ?

A. Why should they ?

Mr. Justice Stuart.—Q. In your note you have laid great stress on the fact that people in order to delay matters give bribes to the clerks to keep papers back, and the only remedy you have suggested is better supervision, but if the judge has the whole of his time taken up by his criminal work how is it possible for him to attend to the work of this supervision also ?

(No reply).

Dr. DeSouza.—Q. What is the total number of sessions cases in your district ? 70 to 80 ?

A. About 70, but they vary from year to year.

Q. What is the class ?

A. Murder.

Q. Is there only one judge to dispose them off ?

A. Yes,

Q. Is your criminal appellate work heavy ?

A. Not very heavy.

Q. How many appeals have you ?

A. Thirty.

Q. Thirty in the whole year ?

A. Yes.

Q. That is not very heavy ?

A. Yes.

Mr. Justice Stuart.—Q. Do you consider that the members of the ministerial staff are paid inadequate salaries ?

A. I don't think so. Their pay has recently been increased.

Q. Do you think that an increase in their pay will do much good ?

A. I don't think so.

Dr. DeSouza.—Q. Is it not a fact that the members of the subordinate judicial staff in Sindh are less paid than the men in the presidency ? Is that not so ?

A. I think it is so.

Mr. Justice Stuart.—Q. My question was about the ministerial staff and not the judicial staff. I take it that you are strongly in favour of reducing the non-judicial work of a judge and giving him relief in his office work which is in no way judicial work ?

A. Yes.

Dr. DeSouza.—Q. How much of your time was taken up in the administration of minors' estates when you were the district judge of Sukkur ?

A. At least half an hour a day, but even then you could not do it properly. You have to trust a good deal to the sheristadar.

Mr. Justice Stuart.—Q. In respect of recording the evidence, I understand, you would be in favour of having the evidence recorded by a shorthand writer. That is one possible remedy, but do you not think that notes of evidence now taken might be very largely abridged ?

A. If you try to abridge, it would result in a waste of time because there will be lot of objections from the pleaders.

Q. But you can say " I take down such notes as I require for my own purpose." It is not the official record.

A. I often say that.

Q. Does not that satisfy them ?

A. They say that this or that is very important and should be taken down.

Q. But everything is taken down in the vernacular record ?

A. Yes.

Q. If you have a double system, then the notes are intended for the judge's own information and the official record is the vernacular record ?

A. Yes.

Q. Do your subordinate judges record evidence in Sindhi ?

A. They themselves record in English and their clerks write down in Sindhi.

Dr. DeSouza.—Q. What about the reading of depositions to the witnesses in the open court after they have been taken down ? Do you do that ?

A. Yes.

Q. Do you then stop the work of the court ? Is it not an enormous waste of time ?

A. It is.

Q. Surely it takes an hour of the court ?

A. Yes, but that is the law.

Mr. Justice Stuart.—Q. You must do it under the law, but the question is whether the law should not be altered ?

A. Occasionally the witnesses make alterations. It is very seldom due to the mistakes of the writer, but it is usually the mistake of the witness himself.

Dr. DeSouza.—Q. They correct in the light of what they have deposed subsequently ?

A. Yes.

Mr. Justice Stuart.—*Q.* How long does it take, as a rule, in the district courts in Sind to issue copies ?

A. There is no reason why the copy should not be issued within four or five days.

Q. In my province the rule is that urgent copies should be supplied on the date of application, and the ordinary copies within four days, and in some districts, where the work is easier, on the second day.

A. There is some slackness here.

Q. Is your copyist a man on monthly salary, or is he paid by fees ?

A. He is paid by fees.

Q. If he is paid by fees then you can appoint more ?

A. That can be remedied.

Dr. DeSouza.—*Q.* Do you give typewritten copies ?

A. Manuscript.

Written statement of Mr. R. K. SHIDWA, Representative of the Indian Merchants' Association, Karachi.

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1. All the commercial, private and other original suits : High Court—6 months for 1st appeals, six months from the date of filing, and 2nd appeals, 9 months.

2. Yes. The main cause of delay is due to the cumbrous process and frequent unnecessary grants for postponement. The suits taken up for regular hearing should be finished off on the very day, if possible, and no postponement be granted unless a very strong case is made out to procure further evidence.

3. As far as Karachi is concerned, the jurisdiction of the small cause court should be raised to Rs. 2,000 provided the cases above Rs. 500 are subject to appeal to the higher court.

6. Yes. Justice is considerably impeded by too frequent transfers in part-heard cases, and in the event of his transfer, the judge should finish up part-heard cases before giving up charge.

7. With a view to minimise delay and maintain efficiency, the present number of holidays should be curtailed and based on the line of Bank holidays, sanctioned under the Negotiable Instruments Act. Saturday should be a working day for the High Court Judges instead of a holiday, as at present. The vacations should be reduced to half of what are granted at present.

8. Yes. In my opinion, delay is due to pleaders having to attend different courts at the same time on the same day. To avoid this, provision should be made whereby pleaders should be allowed to practise in limited courts only : for instance, small cause court pleaders should be attached to the court of small causes and district court pleaders, to district courts only and so forth.

12. There should be a special judicial officer to look after purely miscellaneous work. This will remove a cause of delay.

14. I have no personal experience, but I would certainly prefer giving exclusive rights to the village court with a right of appeal to the superior body consisting of about seven persons selected by the panchayat, whose decision shall be final. They should be given the power to decide cases of all kinds.

17. No.

18. No.

20. No.

23. No. Security guaranteeing the payment of decretal amount could be accepted instead of cash deposit with a proviso that in the event of the party in the suit going to liquidation, the surety should pay the amount forthwith without any further enquiry in the matter by the court.

24. At present, very often, unnecessarily considerable delay takes place in the trial of original suits in the Judicial Commissioner's Court and to a certain extent in small cause courts' suits. This is due to the cumbrous process prevailing at the initial stage in the Judicial Commissioner's Court in having the issues framed, defendants' explanations obtained and unnecessary frequent postponements granted to the parties without sufficient cause, At present to keep the case postponed merely on flimsy grounds or to say on no grounds, continuously for two years is easy. I know of cases where cases were not brought for regular hearing for two and a half years. This process should be considerably improved. As soon as the summonses are served, within one month, the defending party should be asked to give his defence in writing and the issues framed thereon. Within one month from the framing of the issues the suits should be taken up for regular hearing and the parties in the suit asked to produce evidence, documents and witnesses on the day of hearing. No postponement in any case should be given more than three times unless on *bona fide* grounds.

Only sufficient number of cases should be posted for the day of hearing so that they may not be postponed for want of time by the court. At present the parties and the witnesses in the suit have to dance attendance in the court times without number, without any consideration being given by the court to the loss of their valuable time and their unnecessary detention. They have thus to undergo immense expense and loss of time. Further, no accommodation is provided for witnesses in the premises of the Court of the Judicial Commissioner and they have to stand outside the court and loiter about there for hours and hours together before they are either called in to give evidence or the case is adjourned to some other date. In my opinion, the cases should be so arranged during the course of the day on which they are fixed for hearing that the parties should be asked to attend in the court only half an hour before the time fixed for hearing.

25. With regard to the service of summonses, the present process, both in the High Court and small cause court, is still worse. At present bailiffs, it appears would not deliver the summonses in many cases for the reasons best known to them. They intentionally keep off the process for delivery until the last day, or at the most a week before the day of hearing. In this way the party in the suit again finds another excuse for postponement under the pretext of short delivery. In several cases summonses are not delivered before the date of the first hearing even to persons whose addresses are well-known and could be easily ascertained. In my opinion the system of administration in the process department requires searching improvements. In local towns and upcountry, if the summonses are sent by registered post with acknowledgment due, it would facilitate matters and save the abnormal cost of having the summonses served on the parties. This will cause saving in the establishment charges of the Court as well.

28-30. See answer to question 25.

31. The issues should be framed by the Court and within the period suggested above.

35. The same could be avoided by penalising the party for wasting public time and money.

37. No time limit should be fixed.

42. In suitable cases the court should demand security before granting injunctions.

45. All the dates for adjournments for hearing should be fixed by the judge himself on the day the case is adjourned.

46. The judges must consult the pleaders in fixing dates to suit their clients provided of course the adjournment is not longer than the period stated above.

50. The High Court jurisdiction of the Judicial Commissioner's Court has very limited time to supervise the inspection of the lower courts. In Karachi, once in a year, for a month, the Judicial Commissioner starts on a tour to inspect the

courts. This sort of inspection is not sufficient or desirable and a constant and regular inspection is essential.

65. I would prefer headman of the panchayat being invested with the power.

75. At present the decrees are not available at least for two months after the passing of judgment. In my opinion the decree should be ready for execution within seven days from the passing of the judgment and attachment or arrest made within a fortnight from the passing of the judgment.

82. Under no circumstances court-fees should be raised.

85. No.

Mr. R. K. SHIDWA, Representative of the Indian Merchants' Association, Karachi, called and examined on Friday, the 12th September 1924.

Mr. Justice Stuart.—The first suggestion that you make is that the jurisdiction of the small cause court should be raised to two thousand rupees and, in your experience, that will cover a large number of cases which are at present decided by the Judicial Commissioner's Court.

A. Yes.

Q. Then you consider that the courts have too many holidays here. Would you make them work on Saturdays and reduce their vacations to one fortnight ?

A. Yes.

Q. The total number of working days in the courts are 240 to 250. No one works as a rule more than 300 days in the year. People don't work on Sundays and bank holidays. If you reduce the civil court non-sitting days will they not probably want more pay ?

A. No. Why should they have more holidays than bank officials ?

Q. Bank officials do not have to write judgments in their spare time.

A. But the working hours of bank officials are more than what the judges have.

Q. You are in favour of village courts, but you would like to have an appeal from them.

A. Yes. The appeals also may be handed over to panchayats selected by themselves.

Q. Do you think that would work effectively ? Would it not be very difficult to have any sort of record upon which a court could base its decision in appeal. You know there would be only 3 or 4 badly written lines to represent the evidence of each witness. It would be difficult to decide appeals on such materials.

A. The judges would be intelligent and would know to read and write.

Q. Would they write legibly or very much ?

A. That may be so.

Dr. DeSouza.—*Q.* Are there village courts of any kind working in this province ?

A. I have no personal experience.

Mr. Justice Stuart.—*Q.* You have got a considerable knowledge of Karachi conditions for a good many years ?

A. Yes. I was born here.

Q. Have not things got very much worse during the last few years in the Judicial Commissioner's Court ?

A. I have been noticing it during the last 15 years.

Q. I find from the records that previous to 1921 cases in the Judicial Commissioner's Court were heard fairly speedily.

A. I have known cases prior to that which were not even brought for regular hearing for 2½ years.

Q. Do you think the work has always been delayed ?

A. Yes.

Q. Of course, you point out very rightly that a very great deal can be done in speeding up by having better arrangements as to service of processes, more business-like arrangements in bringing the parties before the court and the like.

A. Yes.

Q. But in the end, as things stand at present, have you not to wait for about 2½ years before your witnesses get into the witness box. Even if the preliminaries were concluded more quickly would not the latter delay exist ?

A. Yes. Look at the congestion. If the congestion is not there and if the work is distributed correctly, then I think work would be done more speedily. I would certainly state that the present distribution of work between the Additional Judicial Commissioners is not desirable. Each man has got about 150 cases and not a single case is heard.

Q. What does each do with them ?

A. The pleaders ask for adjournment and he grants them. At one o'clock he finishes his business and goes away.

Q. Why do the pleaders ask for adjournment ?

A. Owing to the indulgence of the Judge.

Q. Why do they want the adjournment ?

A. Simply to please the parties.

Q. How often have you had suits yourself ?

A. I have not had many suits myself. In connection with a newspaper which I edit I have visited the courts for about 10 years, and I have wide experience from that point of view.

Q. In your experience how often does it happen that a witness is brought in the same case to court without being heard ? Is he ever brought 4 or 5 times ?

A. It may happen 10 times.

Q. Then, you point out that there is no proper accommodation for witnesses in the Judicial Commissioner's Court.

A. That is what I feel.

Q. You consider, quite rightly, that every effort should be made to fix the work so that, if work is put down for a certain date, it is done on that date ?

A. Yes.

Q. You have got considerable complaints to make about bailiffs. You consider they are not doing their work properly. Can you suggest any better remedy than proper supervision ? I think they are not properly supervised.

A. In my opinion there is absolutely no supervision. The remedy is to have a better class of men as bailiffs and they should be made to dispose of their processes within a reasonably short period.

Q. What is their pay ?

A. From Rs. 20 to Rs. 40.

Q. In your opinion is that pay sufficient to attract men of the right class ?

A. No.

Q. In Karachi will such a salary provide a man of the right class with decent living accommodation and enough to feed and clothe his family ?

A. No.

Q. Another view that you take on the question of supervision is that there is not sufficient supervision over the courts themselves and that inspection leaves a good deal to be desired ?

A. Yes.

Q. You are very strong on the point that the judges should fix their own dates of hearing just as a business man fixes his own engagements. Business men do not leave the dates of their engagements to be fixed by their clerks, and similarly the judges should also fix dates themselves and not leave that work to their clerks. You say that the judges should also consult the parties and their counsel as to what dates are convenient to them and that they should also try to find out from them as to how long the cases are likely to take.

A. Yes.

Q. Do you think an ordinary intelligent pleader can give a fairly accurate idea, within two or three hours, as to how long a case is likely to take ?

A. Yes.

Q. You remember the time before the Judicial Commissioner's court was started ? In your opinion has there been any improvement under the new arrangement ?

A. Certainly there has been. I would not like to go back to the sadar court. Under the sadar court arrangement one judge had the sole monopoly of appeals.

Dr. DeSouza—Q. It was quite wrong to entrust the power of life and death to one man, but so far as the original work is concerned, has there been any improvement in speed and efficiency ?

A. Times have changed enormously and there has been great increase of work and therefore it is not easy to say exactly what inprovement has been made.

Q. You have no personal knowledge because you were quite young in those days ?

A. In Karachi considerable advance has been made and times have also changed.

Mr. Justice Stuart.—Q. There are two distinct systems in India one of which is the system of the Presidency Towns and the other system is that which obtains outside the Presidency Towns. In the Presidency Town for certain special reasons most of the important original civil and criminal work is done by the High Court and it also exercises appellate jurisdiction over the remainder of the province. Outside the Presidency Towns the Supreme Court has mainly appellate jurisdiction and the original work even at headquarters is done by the ordinary courts. You have really adopted something akin to the Presidency Town system. Do you prefer that system ?

A. I certainly prefer that system, but it is not running exactly on the lines of the Presidency Town system.

Q. The anomaly is that your jurisdiction is the district courts' jurisdiction ?

A. Yes.

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